No. 75-1261

In the Supreme Court of the United States

OCTOBER TERM, 1975

EARL BUTZ, SECRETARY OF AGRICULTURE, APPELLANT

v.

KAREN HEIN, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the three-judge district court (App. A, pp. 1a-23a, *infra*) is reported at 402 F. Supp. 398.

JURISDICTION

The order of the three-judge district court enjoining the Commissioner of Iowa State Department of Social Services from enforcing its statewide regulation disallowing any deduction for educational or

training transportation expenses, for purposes of computing the income of food stamp recipients, and enjoining the Secretary of Agriculture from enforcing the analogous provision of 7 C.F.R. 271.3(c)(1)(iii) on the grounds that those regulations conflict with the Food Stamp Act and deny due process and equal protection, was entered on October 10, 1975. A notice of appeal to this Court (App. C, pp. 26a-27a, *infra*) was filed on November 7, 1975.[1] On December 30, 1975, Mr. Justice Blackmun extended the time for docketing the appeal to and including February 5, 1976, and on January 27, 1976 he further extended the time to and including March 6, 1976.

The jurisdiction of this Court is conferred by 28 U.S.C. 1253, which authorizes a direct appeal by any party from an order granting an injunction in any civil action required to be heard by a three-judge district court. A three-judge district court was required in this case, which was brought by appellees to enjoin, on constitutional grounds, the Commissioner of Iowa State Department of Social Services from enforcing an Iowa administrative regulation having statewide effect. 28 U.S.C. 2281; *Board of Regents* v. *New Left Education Project*, 404 U.S. 541, 542. Appellees moved to join the Secretary as a party defendant because the applicable federal regulations, which are binding on the states, contain a

[1] The Secretary also has filed a notice of appeal to the United States Court of Appeals for the Eighth Circuit. On motion of the Secretary, that court on January 7, 1976, stayed all proceedings pending further order.

provision similar to the Iowa regulation. The district court ordered joinder pursuant to Rule 19(a)(1), Fed. R. Civ. P., and asserted subject matter jurisdiction over the claims against the Secretary under 28 U.S.C. 1337. Cf. *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 725-726; *Rosado* v. *Wyman*, 397 U.S. 397, 402-405; *Moor* v. *County of Alameda*, 411 U.S. 693, 713 and n. 29. Accordingly, this Court has jurisdiction over the Secretary's appeal. See, *e.g.*, *Sterling* v. *Constantin*, 287 U.S. 378, 393-394.

QUESTION PRESENTED

Whether 7 C.F.R. 271.3(c)(1)(iii)(*f*), which disallows an itemized deduction for training transportation expenses for purposes of computing the income of food stamp recipients, conflicts with the Food Stamp Act or denies equal protection or due process.

STATUTES AND REGULATIONS INVOLVED

Section 4(a) and (c) of the Food Stamp Act of 1964, as amended, 7 U.S.C. 2013(a) and (c), provides:

> (a) The Secretary is authorized to formulate and administer a food stamp program under which, at the request of the State agency, eligible households within the State shall be provided with an opportunity to obtain a nutritionally adequate diet through the issuance to them of a coupon allotment which shall have a greater monetary value than the charge to be paid for such allotment by eligible households. * * *
>
> * * * * *

(c) The Secretary shall issue such regulations, not inconsistent with this chapter, as he deems necessary or appropriate for the effective and efficient administration of the food stamp program.

Section 5(b) of the Food Stamp Act of 1964, as amended, 7 U.S.C. 2014(b), provides:

(b) The Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall establish uniform national standards of eligibility for participation by households in the food stamp program and no plan of operation submitted by a State agency shall be approved unless the standards of eligibility meet those established by the Secretary. The standards established by the Secretary, at a minimum, shall prescribe the amounts of household income and other financial resources, including both liquid and nonliquid assets, to be used as criteria of eligibility. * * *

Section 7(b) of the Food Stamp Act of 1964, as amended, 7 U.S.C. 2016(b), provides:

Notwithstanding any other provision of law, households shall be charged for the coupon allotment issued to them, and the amount of such charge shall represent a reasonable investment on the part of the household, but in no event more than 30 per centum of the household's income * * *.

7 C.F.R. 271.3 provides in pertinent part:

(c) *Income and resource eligibility standards of other households.* Each State agency shall

apply the uniform national income and resource standards of eligibility established by the Secretary to determine the eligibility of all other applicant households, including those in which some members are recipients of federally aided public assistance or general assistance.

(1) *Definition of income.* (i) Monthly income means all income which is received or anticipated to be received during the month. To compute maximum monthly income for purposes of determining eligibility, income shall mean any of the following but is not limited to:

* * * * *

(*f*) Payments received from federally aided public assistance programs, general assistance programs, or other assistance programs based on need;

(*g*) Payments received from Government-sponsored programs such as Agricultural Stabilization and Conservation Service programs, the Work Incentive Program, or Manpower Training Program;

* * * * *

(*i*) Cash gifts or awards (except as provided in subdivision (ii)(*e*) of this subparagraph) for support, maintenance, or the expenses of education.

(*j*) Scholarships, educational grants (including loans on which repayment is deferred until completion of the recipient's education), fellowships, and veterans' educational benefits;

* * * * *

(iii) Deductions for the following household expenses shall be made (this list is inclusive and

no other deductions from income shall be allowed):

* * * * *

(*f*) Tuition and mandatory fees assessed by educational institutions (no deductions shall be made for any other education expenses such as, but not limited to, the expense of books, school supplies, meals at schools, and transportation).

STATEMENT

1. Under the Food Stamp Act of 1964, 78 Stat. 703 *et seq.*, as amended, 7 U.S.C. 2011 *et seq.*, the Secretary of Agriculture administers a food stamp program under which low-income households are issued monthly allotments of coupons that can be exchanged for food at approved retail stores. 7 U.S.C. 2013(a). The exchange value of the coupons is set at a level intended to ensure that the household can obtain a nutritionally adequate diet. 7 U.S.C. 2016 (a).

The Secretary is authorized to "prescribe the amounts of household income and other financial resources, including both liquid and nonliquid assets, to be used as criteria of eligibility" for participation in the program (7 U.S.C. 2014(b)), and to establish standards for determining the amount eligible households must pay for their coupons (the purchase requirement), which "shall represent a reasonable investment on the part of the household, but in no event more than 30 per centum of the household's income." 7 U.S.C. 2016(b). The states are authorized to determine which households satisfy the federal eligibility and payment standards. 7 U.S.C. 2019(b) and (e).

Pursuant to this authority, the Secretary has determined that payments received by a household from federal assistance programs are to be included in income. 7 C.F.R. 271.3(c)(1)(i)(*f*) and (*g*). Under the Secretary's regulations, deductions from income are allowed for payments made by the household for educational tuition and fees, but only a standard nonitemized deduction (of no more than $30 per month) is permitted on account of other, incidental, training expenses, such as transportation. 7 C.F.R. 271.3(c)(1)(iii)(*a*) and (*f*). The State of Iowa's eligibility and payments standards similarly include federal assistance in household income and disallow training transportation expenses as an itemized deduction from income.[2]

2. In September 1972, appellee Karen Hein, a food stamp recipient, was granted assistance under a State Individual Education and Training Plan pursuant to the Social Security Act, Title IV, 49 Stat. 627, as amended, 42 U.S.C. 601 *et seq.* (see 45 C.F.R. 220.51(c)(3), 34 Fed. Reg. 1354, 1359-1360 (1969)), for training as a registered nurse. The assistance included a monthly travel allowance of $44 to defray the cost of commuting from her home to the nursing school (App. A, p. 4a, *infra*).

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[2] Iowa State Department of Social Services Manual, Section VII, ch. 3, p. 13, Item *j*, requires inclusion of travel allowances in income. Section VII, ch. 3, p. 16, Item *d*, of the Manual further provides (see App. A, p. 2a, *infra*):

> Transportation and other miscellaneous expenses such as uniforms, shoes, etc., are not to be considered specific training costs and are not deductible.

Her household income was increased to reflect this additional assistance, without a fully offsetting deduction for training transportation costs. Accordingly, the amount she was required to pay for her monthly coupons also increased (*ibid.*).

After exhausting state administrative remedies, appellee commenced this action in the United States District Court for the Southern District of Iowa, on behalf of herself and others similarly situated, seeking to enjoin state officials from including the transportation allowance in her income for food stamp purposes. Appellee contended that the state regulations requiring such inclusion, and denying a fully offsetting deduction for travel costs, was inconsistent with the Food Stamp Act and denied her equal protection and due process (App. A, p. 2a, *infra*).

The three-judge district court, convened pursuant to 28 U.S.C. 2281, held that the state regulation disallowing an itemized deduction for training travel expenses was inconsistent with the then applicable federal regulation, which allowed a deduction generally for "[e]ducational expenses which are for tuition and mandatory school fees * * *." 7 C.F.R. 271.3(c)(1)(iii)(*e*) (1973 rev.). The district court enjoined the state defendants from further enforcement of the state regulation disallowing an itemized deduction for training travel costs. *Hein* v. *Burns*, 371 F. Supp. 1091. This Court vacated and remanded for reconsideration in light of the Secretary's intervening promulgation of 7 C.F.R. 271.3(c)(1)(iii)(*f*), which amended the prior regulation specifically

to exclude transportation costs from the educational or training expenses that may be itemized and deducted in computing a household's net income. 419 U.S. 989.

On remand, the district court granted appellee's motion to join the Secretary as a party defendant. The court held invalid both the state and the amended federal regulations. The court reasoned that travel allowances defray commuting costs and therefore do not increase a household's "food purchasing power," and that to reduce food stamp benefits on account of such allowances is "inconsistent with * * * the remedial purposes of the act" (App. A, pp. 13a, 15a, *infra*). The court further determined that the regulations deny equal protection to food stamp recipients who receive travel allowances, reasoning that such recipients thereby are denied benefits accorded other food stamp recipients with the same food purchasing power (App. A, pp. 16a-19a, *infra*), and that the regulations also deny due process by establishing an irrebutable presumption that travel allowances increase ability to purchase food (App. A, pp. 19a-23a, *infra*).

The court enjoined the state and federal defendants "from including in the monthly net income of any person * * * any amount received by such person as reimbursement for necessary commuting expenses, pursuant to an Individual Education and Training Plan, unless such amount is deducted from such person's monthly net income in determining * * * adjusted net income" (App. A, p. 22a, *infra*). The

court also ordered the state and federal defendants to "make a forward adjustment of the price of future stamps by reducing the price of food stamp coupons in future months by whatever amount necessary for as many months as necessary so as to fully compensate the recipient financially for food stamps wrongfully denied in the past" (App. A, pp. 22a-23a, *infra*).

THE QUESTION IS SUBSTANTIAL

This appeal presents an important question concerning the scope of the Secretary's statutory authority to define net income for the purposes of the Food Stamp Act and the proper application of the Due Process Clause to economic and social welfare legislation.[3] The district court incorrectly construed the

[3] We have no estimate of the amount of additional benefits that the Secretary would be required to pay if the decision below is allowed to stand. Educational or training transportation allowances of the kind involved here are paid by the individual states with funds provided to them by the federal government (on a three-to-one matching basis) under the Social Security Act, 49 Stat. 620, as amended, 42 U.S.C. 301 *et seq.* The Department of Health, Education, and Welfare informs us that it has no record of the amount of such transportation allowances currently being paid by the states.

We are informed by the State of Iowa that in fiscal year 1975 it paid $426,000 in educational or training transportation allowances to 899 needy families (representing 3.6 percent of all households in the state that receive aid to families with dependent children), or approximately $473 per recipient household. If this experience were extrapolated on a nationwide basis, *i.e.*, if it were assumed that 3.6 percent of all AFDC households receive an annual travel allowance of $473, the total amount of travel allowances paid annually would be approximately $59.6 million (we are informed by the Department of Health, Education, and Welfare that there are currently approximately 3.5 million AFDC families in the United States). Exclusion of this amount from the incomes of food stamp households would increase the annual federal costs of the food stamp program by $14.3 million (we are informed by the Department of Agriculture that the average purchase requirement for a food stamp household is now 24 percent of net income).

Moreover, the rationale of the decision below would appear to extend not just to educational or training transportation allowances but to all similar funding of services of needy households. The Department of Health, Education, and Welfare informs us that it has budgeted $2.258 billion in Title XX grants for fiscal year 1976, out of which such funding could be provided (42 U.S.C. (Supp. IV) 1397a(a)(1)), but that it cannot estimate the extent to which the states will allocate funds for particular services.

Food Stamp Act, and applied the Due Process Clause in a manner inconsistent with *Weinberger* v. *Salfi*, 422 U.S. 749.

1. The Secretary's regulations are authorized by the Food Stamp Act. Although a household's eligibility for food stamp assistance, and the amount of its purchase requirement, depends upon its "income," that term is not defined in the Act. But the Secretary is given wide latitude to promulgate regulations "not inconsistent with [the Act], as he deems necessary or appropriate for the effective and efficient administration of the food stamp program." 7 U.S.C. 2013(c). Pursuant to this authority, the Secretary has defined "income" as including federal assistance received by the household, without any itemized deduction for educational or training transportation expenses. This definition is reasonable and should have been sustained.

The Secretary's inclusion in gross income of federal assistance, including educational or training transportation allowances, is proper. Such assistance enlarges the amount of financial resources generally available to the household and is appropriately taken into consideration in determining the household's need for further assistance in the form of food stamps.[4] Indeed, the district court did not contest the Secretary's authority to include travel allowances in gross income but invalidated only the "disallowance of the plaintiffs [*sic*] transportation allowance as a deduction" (App. A, p. 15a, *infra*).

The Secretary's disallowance of educational or training transportation expenses as an itemized deduction was reasonable.[5] The district court's reason for holding otherwise was simply that amounts expended on transportation are unavailable for the purchase of food and therefore should be disregarded in determining the household's need for food stamp as-

[4] Moreover, Congress intended federal assistance to be included in household income. As the Senate Committee on Agriculture and Forestry stated in explaining the effect of a proposed amendment to the Act (S. Rep. No. 91-292, 91st Cong., 1st Sess. 10 (1969); emphasis added):

> No household would be required to pay more than 30 percent of its income (*including welfare payments, of course, since for all purposes under the act the term "income" includes welfare payments*).

[5] The Secretary does in fact allow a standard, nonitemized monthly deduction of 10 percent of a training allowance or $30, whichever is less, to cover all incidental training expenses. 7 C.F.R. 271.3(c)(1)(iii)(*a*); U.S. Department of Agriculture, *Food Stamp Certification Handbook*, §§ 2262.4 and 2264.1 (August 5, 1974).

sistance. But this reasoning, if applied generally, would appear to require the Secretary to allow a deduction from gross income for all nonfood expenses, or at least all such expenses that may be deemed either necessary or socially desirable.[6] Congress must be presumed to have contemplated that substantial portions of a household's "income" would have to be expended on nonfood items; nothing in the Act suggests that Congress intended to require that such expenditures be deducted in computing net income.

Finally, it was not unreasonable for the Secretary to allow a deduction for direct educational or training expenses, *i.e.*, "[t]uition and mandatory fees assessed by educational institutions" (7 C.F.R. 271.3(c)(1)(iii)(*f*)),[7] and to disallow an itemized deduction for incidental educational or training expenses such as the commutation expenses involved here. Cf. *Commissioner* v. *Flowers*, 326 U.S. 465 (holding that commutation expenses are not deductible as business

[6] Under the Secretary's regulations, ordinary living expenses are not generally deductible. Deductions are allowed, however, for the amount by which shelter costs exceed 30 percent of gross income, 7 C.F.R. 271.3(c)(1)(iii)(*h*), and for "[u]nusual expenses incurred due to an individual household's disaster or casualty losses which could not be reasonably anticipated by the household." 7 C.F.R. 271.3(c)(1)(iii)(*e*).

[7] To the extent that the Act's exemption of students from the requirement of registration for employment evidences congressional encouragement of education and training (but compare App. A, p. 15a, *infra*, with *Stewart* v. *Butz*, 356 F. Supp. 1345 (W.D. Ky.), affirmed *per curiam*, 491 F. 2d 165 (C.A. 6)), the deduction for tuition and fees is sufficient to carry out that purpose.

expenses for federal income tax purposes). Many incidental expenses, including commutation expenses, are of a kind that might have been incurred even if the recipient was working rather than attending school; moreover, such expenses may reflect personal consumption choices (*e.g.*, a preference for traveling by private automobile rather than by public transportation) that should not affect the amount of federal food stamp assistance that the household is eligible to receive.

2. The Secretary's regulations do not violate the principles of equal protection that inhere in the Due Process Clause of the Fifth Amendment. To the contrary, they conform more closely to the ideal of equal treatment than does the solution devised by the district court. The Secretary's regulations with regard to educational or training transportation expenses reflect the real difference in need levels between households whose commutation expenses are defrayed by transportation allowances and those whose commutation expenses are not so defrayed. The former households are better off, by the amount of their transportation allowances, and the Secretary's regulations realistically take account of this fact. The decision below obliterates this distinction, treating all households with educational or training transportation expenses alike, without regard to whether such expenses are defrayed by grant or borne directly by the household.

Since the Secretary's inclusion of transportation allowances in income, and disallowance of an itemized

deduction for commutation expenses, provides a reasonable and economically sound standard for allocating social welfare benefits, it satisfies the requirements of the Due Process Clause. See *Weinberger* v. *Salfi*, 422 U.S. 749; *Jefferson* v. *Hackney*, 406 U.S. 535; *Dandridge* v. *Williams*, 397 U.S. 471.[8]

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted.

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MARCH 1976.

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[8] The district court further erred in holding that the Secretary's regulations deny due process by establishing an irrebuttable presumption. Insofar as "irrebuttable presumption" analysis is simply a veiled method of imposing rigorous equal protection scrutiny, it does not furnish an appropriate test for ordinary social welfare classifications of the kind involved here. See *Weinberger* v. *Salfi*, *supra*. To the extent that such analysis seeks further to subject legislative classifications to the standard of universal truth required of evidentiary presumptions, it is without constitutional justification. See generally Note, *The Irrebuttable Presumption Doctrine in the Supreme Court*, 87 Harv. L. Rev. 1534 (1974).

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

[Filed Oct. 10, 1975; R. E. Longstaff, Clerk,
U.S. District Court, Southern District of Iowa]

Civil No. 73-240-1

KAREN HEIN, Individually and on behalf of all other persons similarly situated, PLAINTIFFS

vs.

KEVIN J. BURNS, ET AL., DEFENDANTS

MEMORANDUM

Before STEPHENSON, Circuit Judge, HANSON Chief District Judge, and STUART, District Judge.

STUART, District Judge.

This is a class action under Rule 23 of the Federal Rules of Civil Procedure challenging certain departmental regulations which have the effect of requiring persons who receive a travel allowance under the Federal Government's Individual Education and Training Plan to pay more for food stamps than they would otherwise, even though all of the travel allowance is spent for the necessary travel. Plaintiff claims that both State and Federal Regulations are

inconsistent with the Food Stamp Act, 7 U.S.C. §§ 2011 and 2014, and violate her rights to Equal Protection and Due Process under the Fifth and Fourteenth Amendments to the United States Constitution. The case is before this Court on cross motions for summary judgment based on stipulated facts.

This Court has jurisdiction of plaintiff's statutory challenge to the State Regulations by 42 U.S.C. § 1983 and 28 U.S.C. § 1343. Further 28 U.S.C. § 1337 provides this Court with original jurisdiction to consider plaintiff's challenge to the Federal Regulatory scheme. This section grants to the district courts "original jurisdiction of any civil action or proceeding arising under any act of Congress regulating commerce * * *". See Moreno v. United States Department of Agriculture (1972), 345 F. Supp. 310, 313, aff'd. 413 U.S. 528; Murphy v. Colonial Federal Savings and Loan Ass'n. (2d Cir., 1967), 388 F. 2d 609, 615.

On March 4, 1974 this three-judge court, properly convened pursuant to 28 U.S.C. §§ 2281 and 2284, held the state regulation in the Iowa State Department of Social Services Manual, section VII, ch. 3, p. 16, Item d [1] [hereinafter idem d] was inconsistent

[1] Iowa State Department of Social Services Manual, Section VII, Ch. 3, p. 13, item j specifically requires inclusion of a transportation allowance in gross income. Item d then denies this sum as a deduction in determining Adjusted Net Income.

with 7 C.F.R. § 271.3(c)(1)(iii)(e) [2] as then written, and issued an injunction consistent with such holding.

The State of Iowa appealed to the United States Supreme Court, which, on December 12, 1974, vacated the judgment entered thereon and remanded the case to this Court "for consideration in light of the revision of the regulations of the Department of Agriculture. See 7 C.F.R. § 271.3(c)(1)(iii)(f)." [3] The revised regulation made it clear that the position of the Department of Agriculture and the Iowa Department of Social Services was the same insofar as the travel allowances were concerned in computing the cost of food stamps.

Proper federal employees have now been made parties defendant and this Court must determine, on cross-motions for summary judgment:

(1) Whether the regulations in question are subject to judicial review.

(2) Whether the pertinent state and federal regulations are in conflict with the Food Stamp Act.[4]

[2] This section provided in part:

(iii) Deductions for the following household expenses shall be made * * *

(e) Educational expenses which are for tuition and mandatory school fees including such expenses which are covered by scholarships, educational grants, loans, fellowships and veteran's educational benefits.

[3] 39 Fed. Reg. 26003. 419 U.S. 989 (1974). *See also* 39 Fed. Reg. where the secretary said "* * * the educational expenses which may be deducted have not been changed but have been revised for purposes of clarity.

[4] 7 U.S.C. §§ 2011 et seq. (1970).

(3) Whether such regulations violate plaintiffs rights to due process and equal protection under the Fifth and Fourteenth Amendments.

I. Facts

Plaintiff is a divorced mother of two children residing in Muscatine, Iowa. Except for a short period of time, the duration and cause of which are not relevant here, she has, at all times material, been eligible for and received food stamp assistance under the Food Stamp Act of 1964 and Iowa Code Sections 234.6 and 234.11. In addition, Mrs. Hein is participating in an Individual Education and Training Plan under the auspices of which she has been receiving training as a nurse at St. Lukes School of Nursing in Davenport, Iowa. To help defray the cost of commuting from Muscatine to Davenport, plaintiff receives a travel allowance of $44 per month from the government all of which is spent for travel.

Pursuant to the above cited federal and state regulations, this travel allowance is included as an item of income for determining "Adjusted Net Income". Since this latter item determines the amount an individual must pay for the allotment of food stamps,[5] plaintiff and other members of the class she represents must pay more for food stamp aid because they

[5] The specific quantity of food stamps allotted per family is based on family size. However, once that determination is made, the price each participant must pay is based on their "Adjusted Net Income".

are receiving travel allowances, even though the allowances are spent entirely to defray commuting expenses and do not increase their food purchasing power.[6] As a result, participation in the training program and receipt of the travel allowance leaves participants with less food purchasing power than would be available if they did not take part in the program, thus resulting in the actual receipt of less than the contemplated benefits of each program individually.

II. Jurisdiction

Federal defendants challenge the jurisdiction of this Court on two grounds: (A) As the state regulations and federal regulations are identical in effect and as state regulations are enacted to comply with federal requirements, the complaint is an attack on the federal regulations and the suit is precluded by the doctrine of sovereign immunity; (B) the determination of what is and what is not income for the purposes of the Food Stamp Act is committed to agency discretion by law within the meaning of the Administrative Procedure Act, Section 701(a)(2) and is therefore not subject to judicial review. In the context of the claims pressed by the plaintiffs in this case, the Court finds these two arguments unpersuasive.

[6] The travel allowance is based on actually commuted expense. $44 per month is the maximum allowance, and is only a percentage of the actually computed cost.

(A)

The Court holds this suit is not barred by the doctrine of sovereign immunity. While the United States Supreme Court has long held that suits against government agents or agencies which specifically affect property in which the United States has an interest are barred by the doctrine of sovereign immunity, Malone v. Bowdoin (1962) 369 U.S. 643, 646; Larson v. Domestic & Foreign Commerce Corp. (1949), 337 U.S. 682, 688-89, the Supreme Court has also set forth two exceptions to this general rule; (1) actions in which it is alleged that officers of the United States acted beyond their statutory powers, and (2) cases where, even though officers acted within the scope of their authority, the powers themselves or the manner in which they are exercised are constitutionally void. Malone v. Bowdoin, supra at 647; Larson v. Domestic & Foreign Commerce Corp. (1949), 337 U.S. 682, 689-690; Association of Northwestern Steelheaders v. Army Corps of Engineers (9th Cir., 1973), 485 F. 2d 67, 69; California Legislative Council for Older Americans v. Weinberger (E.D. Cal., 1974), 375 F. Supp. 216, 219; Izaak Walton League of America v. St. Clair (D. Minn., 1970), 313 F. Supp. 1312, 1314. In these two situations, courts take the position that a suit against a government officer is not a suit against the sovereign because the actions of the officer are beyond the power delegated by statute and because such actions cannot constitutionally be sanc-

tioned by the sovereign. The claims which the plaintiffs seek to press in this action fall squarely within these recognized exceptions to the general bar of sovereign immunity. The plaintiffs assert basically two claims: (1) the regulations (both state and federal) are in conflict with the Food Stamp Act which created the right to make regulations, and (2) the regulations as enacted violate Constitutional guarantees of due process and equal protection.

The fact that a case falls within an exception to the doctrine does not end inquiry, however, for it must be further shown that granting the relief sought will not place an intolerable burden upon governmental functions. This is not necessarily an absolute ban upon all such suits which seek some affirmative action but rather it is a requirement that the court consider whether the burden on governmental functions outweighs any consideration of private harm. Association of Northwestern Steelheaders v. Army Corps of Engineers (9th Cir., 1973), 485 F. 2d 67, 69-70; Washington v. Udall (9th Cir., 1969), 417 F. 2d 1310, 1317-18; Izaak Walton League of America v. St. Clair (D. Minn., 1970), 313 F. Supp. 1312, 1315. It appears that the type of relief sought by the plaintiffs does not place an undue burden upon governmental functions. A number of recent cases have involved a challenge to agency action which, if successful, would require some expansion of welfare benefits. See United States v. Moreno (1973), 413 U.S. 528; Rodway v. United States (D.C. Cir., 1975), 514 F. 2d 809;

California Council for Older Americans v. Weinberger (E.D. Cal., 1974), 375 F. Supp. 216, 219; Huerta v. Health and Social Services Dept. (1974), 86 N.M. 480, 525 P. 2d 407. Just as these suits were not barred by the doctrine of sovereign immunity, the case at hand is not so barred.

B

The second jurisdictional challenge of the defendants must also fail. The defendants argue that this suit is rendered non-reviewable by 5 U.S.C. § 701(a)(2) of the Administrative Procedure Act which provides that agency actions are subject to judicial review except so far as "agency action is committed to agency discretion by law". The defendants point specifically to 7 U.S.C. § 2013(a) which provides that:

> The Secretary is authorized to formulate and administer a food stamp program under which, at the request of the State agency, eligible households within the state shall be provided with an opportunity to obtain a nutritionally adequate diet through issuance to them of a coupon allotment * * *.

Subsection (c) of that section provides that:

> The Secretary shall issue such regulations, not inconsistent with this chapter, as he deems necessary or appropriate for the effective and efficient administration of the food stamp program.

In light of these provisions, the defendants argue that the definition of income which determines eligibility and the amount to be charged to the recipient

for coupon allotments is committed by law to agency discretion and is not reviewable by the courts.

First of all, judicial review is not sought here pursuant to the Administrative Procedure Act, but rather under 42 U.S.C. § 1983 to redress deprivations under color of state law. Secondly, the agency discretion exception is a narrow one. S. Rep. No. 752, 76th Cong., 1st Sess. 26 (1945). See Citizens to Preserve Overton Park v. Volpe (1971), 401 U.S. 402, 410; Adams v. Richardson (D.C., Cir., 1973), 480 F. 2d 1159; Barlow v. Collins (1970), 397 U.S. 159, 166-67. Statutory language which grants discretion does not necessarily block judicial review, for almost all agency actions involve some discretion and Congress did not intend to cut off judicial review in all agency actions. Ferry v. Udall (9th Cir., 1964), 336 F. 2d 706, 71), cert. denied 381 U.S. 904. Whether agency action is committed to agency discretion within the meaning of the statute "depends upon whether Congress has manifested in the statutes governing the agency action in question an intent to cut off review". Rockbridge v. Lincoln (9th Cir., 1971), 449 F. 2d 567, 570; Cappadora v. Celebrezze (2nd Cir., 1966), 356 F. 2d 1, 6. Furthermore, "only upon a showing of 'clear and convicing evidence' of a contrary legislative intent should the courts restrict access to judicial review". Abbott Laboratories v. Gardner (1967), 387 U.S. 136, 141; Barlow v. Collins, supra, at 166-67.

No provisions of the Food Stamp Act preclude judicial review. Provisions which authorize a secre-

tary to "prescribe such regulations as he may deem proper to carry out the provisions of this chapter" do not establish that Congress intended to cut off avenues of judicial review. Barlow v. Collins, supra, at 165. The Supreme Court in Barlow went on to conclude that:

> On the contrary, since the only or principal dispute relates to the meaning of the statutory term, the controversy must ultimately be resolved, not on the basis of matters within the special competence of the Secretary, but by judicial application of cannons of statutory construction. *Id.* at 166.

Courts thus may entertain suits to determine whether regulations promulgated to administer an Act are consistent with that act. Ferry v. Udall, supra, at 713. When viewed in such a light, it is clear that the questions brought before the court here are not committed by Congress solely to agency discretion and are reviewable in the courts.

Even if this suit did not fit neatly into a category where it is judicially reviewable under the Administrative Procedure Act, it could not be blocked by the "agency discretion exception". Certain types of suits are not blocked by this exception. The Supreme Court has recognized that "where the matter is peradventure clear, where the agency is clearly derelict in failing to act, where the inaction or action turns on a mistake of law, then judicial relief is often available". See Panama Canal Co. v. Grace Line, Inc. (1958), 356 U.S. 309, 318; Harmon v. Bruckner

(1958), 355 U.S. 579, 581-82. Actions of an agency in excess of its delegated powers and contrary to statute are reviewable. Harmon v. Bruckner, supra. A district court has jurisdiction to construe the statute involved to determine whether a government agent exceeded his or her statutory grant of power. *Id.* at 582. Furthermore, an agency action which is challenged as a denial of constitutional rights can be reviewed in a court of law. Webster Groves Trust Co. v. Saxon (8th Cir., 1966), 370 F. 2d 381, 387; Gonzalez v. Freeman (D. C. Cir., 1964), 334 F. 2d 570, 575. A third type of action to which the doctrine of nonreviewability is no barrier is one which challenges the acts of a government agent which are arbitrary, capricious, or an abuse of discretion. Webster Groves Trust Co. v. Saxon, supra. No statute commits to an agent the discretion to act in excess of a statutory grant of power, to act arbitrarily or capriciously, or to unlawfully discriminate in violation of the constitution and such acts are subject to restraint by the courts. *Id.* at 387.

These challenges here are of a type which are not committed to agency discretion so as to preclude judicial review, and they fall within recognized exceptions to the doctrine of nonreviewability. The challenges of the plaintiffs in this action are not barred by § 701(a) of the Administrative Procedure Act.

III. Conflict between statute and regulations.

As a basic premise for consideration, the Court notes that the Act, and therefore necessarily the regu-

lations promulgated pursuant thereto, are remedial in nature and thus entitled to a broad construction consistent with this purpose. To treat the Act otherwise would be "to abuse the interpretative process and frustrate the announced will of the people". A. H. Phillips, Sec. v. Walling (1945), 324 U.S. 490, 493. Thus the Court must seek to effectuate the Congressional mandate as evidenced by the statement:

> It is hereby declared to be the policy of Congress, in order to promote the general welfare, that the nations abundance of food should be utilized * * * to safeguard the health and well-being of the nations population and raise levels of nutrition among low income households. The Congress hereby finds that the limited food purchasing power of low income households contributes to hunger and malnutrition among members of such households. The Congress further finds that increased utilization of food in establishing and maintaining adequate levels of nutrition will promote the distribution in a benefiecial manner of our agricultural abundances and will strengthen our agricultural economy, as well as result in a more orderly marketing of food. * * *

Food Stamp Act of 1964 § 2, 7 U.S.C. § 2011 (1970). Stated simply, the Congressional purpose appears to be two-fold; to promote adequate nutritional levels among low income households and to stimulate the agricultural economy by encouraging purchasing of agricultural surpluses. This Court must view with

disfavor any regulations which do not promote this goal.

Under the Act both Federal and State agencies are given the responsibility of developing standards designed to limit participation to these [*sic*] households whose income is a "substantial limiting factor in the attainment of a nutritionally adequate diet". S. Rep. No. 1124. 2 U.S. Code Cong. & Admin. News 3275 (1964). It was contemplated that families would be certified to participation on the basis of their individual financial need, established as a general economic criteria. H.R. Rep. No. 1022, Explanation of the Department of Agriculture, 2 U.S. Code Cong. & Admin. News 3284 (1964). Within the limits of these parameters the Court must determine whether the regulations in question are consistent with the act itself.

Viewed in this perspective it is difficult to see how the challenged regulations can effectuate the Congressional goals. By denying recipients of a travel allowance a deduction from "Monthly Net Income" for such allowances, the Department of Social Services, and the Department of Agriculture, in effect, encourage the continuance of the very situation the food stamp program was designed to alleviate. Under this record the travel allowance is spent entirely to defray commuting expenses. Therefore, receipt of such allowances has no effect on food purchasing power. Yet under the current regulatory formula for computing the cost of food stamp participation, the travel allowance operates to increase the amount

an effected [*sic*] household must pay to purchase a given quantity of food. This is amply illustrated by the case of the named plaintiff. Without her $44 monthly travel allowance Mrs. Hein would have to pay $46 each month to obtain food stamps with a purchasing power of $94. (Plaintiff's Exhibit 1.) With her travel allowance as presently treated she has to pay $58 each month for the same $94 worth of stamps.

The Act, in delegating administration provides:

> (a) The Secretary is authorized to formulate and administer a food stamp program under which, * * * eligible households within the state shall be provided with an opportunity to obtain a nutritionally adequate diet through the issuance to them of a coupon allotment which shall have a greater monetary value than the charge to be paid for such allotment by eligible households.
>
> (c) The Secretary shall issue such regulations, not inconsistent with this chapter, as he deems necessary or appropriate for the effective and efficient administration of the food stamp program.

7 U.S.C. §§ 2013(a), (c) (1970). Regulations promulgated by the Secretary under this statutory grant are found at 7 C.F.R. § 271.3(c)(1). Regulations that include plaintiff's transportation allowance as income § 271.3(c)(1)(i)(f and g) and disallow it or actual transportation costs as an expense, § 271.3(c)(1)(iii) (d and f) do not further the purposes of the act and are inconsistent with its purposes.

Further support for this conclusion is found in § 2014(c) which provides a special exemption to the exclusion of persons eligible to participate in the benefits of the Act. This exception includes bona fide students in any accredited school or training program. The logical construction of this provision is that Congress intended to provide consideration for those who participate in educational programs in an attempt to enhance their earning capacity. This goal cannot be properly furthered if allowances such as the one in question here are used to actually decrease the food purchasing power of participants.

The literal import of the Act, as supported by what legislative history there is, indicates that Congress sought to encourage food stamp recipients to secure education and training. Commuting expenses certainly reduce the level of actually available income. Reimbursement, while partially restoring that level does not increase an individuals purchasing power. See Shea v. Vailpando (1974), 416 U.S. 251, 258-61.

For the above described reasons the Court is of the conviction that disallowance of the plaintiffs transportation allowance as a deduction, is a regulatory interpretation inconsistent with both the remedial purposes of the act and with the Congressional purpose underlying it. Thus, Item d and 7 C.F.R. § 271.3 (c)(i)(iii)(f) cannot be sustained.

IV. Equal Protection

In addition to the inconsistency mentioned above, plaintiff has further alleged that Iowa State Department of Social Services Manual VII-3-16(d), and 7 C.F.R. §§ 271.3(c)(i)(iii)(d) and (f) violate her rights to equal protection under the Fourteenth Amendment to the United States Constitution by not allowing a deduction for transportation. This is an arbitrary distinction between those food stamp recipients who receive such travel allowances and those who do not, even though both classes are similarly situated in terms of disposable income and purchasing power. It is further alleged that this distinction is arbitrary because it isolates for treatment the educational cost of commuting from other educational costs for which recipients are allowed corresponding deductions.

The Court will first note that plaintiff and the class she represents are a definable group created by legislative distinction. Food stamp recipients who are receiving a transportation allowance constitute one class, those not receiving such an allowance the other. Included within this second class are those food stamp recipients who, although receiving a baby-sitting allowance, are allowed a deduction for it from their monthly net income.

Regulatory distinctions must be based on differences that are reasonably related to the purposes of the Act in which those differences are found. Morey v. Doud (1957), 354 U.S. 457, 465; Dandridge v. Williams (1970), 397 U.S. 471, 485; Rinaldi v. Yeager (1966), 384 U.S. 305, 309. The purposes specifically designated by Congress in enacting the Food Stamp Act were to alleviate hunger and malnutrition and to improve the agricultural economy. A classification, and subsequent disparate treatment of that class which acts directly to reduce their food purchasing power bears no relationship to the purposes of the Act. The challenged classification is clearly irrelevant to the stated purpose of the Act. The travel allowance in question, being necessarily utilized entirely to defray commuting expenses clearly bears no relationship to the recipients ability to provide herself and her family with an adequate nutritional level, nor to stimulate the agricultural economy. See U.S. Department of Agriculture v. Moreno, supra, at 534.

In order to test compliance with both Fifth and Fourteenth Amendment Equal Protection principles this Court must use the "traditional" equal protection analysis. U.S. Dept. of Agriculture v. Moreno, supra; U.S. Dept. of Agriculture v. Murry (1973), 413 U.S. 508. Traditional equal protection analysis requires that equally situated individuals be treated differently only when the classification is reasonable, not arbitrary, and related to a legitimate government objective. San Antonio Independent School District v. Rodriguez (1973), 411 U.S. 1; Eisenstadt v. Baird (1972), 405 U.S. 438. This test of "minimal" rationality has been held by the Supreme Court to be the appropriate standard to apply to questions involving welfare benefits. Weinberger v. Salfi (U.S.

June 26, 1975), 43 U.S.L.W. 4985, 4991; Jefferson v. Hackney (1971), 406 U.S. 535; Dandridge v. Williams, supra, at 485. The test of minimal rationality requires only that some legitimate governmental objective appear.

Thus, if it is to be sustained, the challenged classification must rationally further some legitimate governmental interest other than those specifically stated in the Act itself. See United States Department of Agriculture v. Moreno, supra, at 534. The defendants have not presented, nor has this Court been able to ascertain any legitimate governmental interest in drawing the distinction between the classes represented here.

The requirement of Equal Protection denies government "the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of a criteria wholly unrelated to the objective of the enactment". Reed v. Reed (1971), 404 U.S. 71, 75-76. Traditionally, where the classification drawn relates not to a goal of the Act itself but to some other reasonable governmental purpose, legislation has been sustained. But as was noted above, there is no such purpose here. There is no contention that it is necessary for the preservation of funds, nor that it is designed to prevent systematic abuses. There appears to be no reasonable interest in the challenged classification.

The legitimate governmental interest would seem to be one of ensuring that the two Acts work in harmony, not that utilization of one penalize use of the

other. See U.S. Dept. of Agriculture v. Moreno, supra. As the Court noted in Dandridge v. Williams, supra, at 485; "In the areas of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect". Mathematical nicety or complete equality are not required. Lindsley v. Natural Carbonic Gas Co. (1911), 220 U.S. 61, 78. Yet when no state of facts will justify the classification it cannot be sustained.

The challenged classification here, being inconsistent with the purposes of the Act, and creating an arbitrary class of welfare recipients is such a regulation. It operates to effect a class in contravention of basic principles of equal protection of the laws and therefore cannot withstand scrutiny.

V. Due Process

Plaintiff has further alleged that denying her a deduction for funds received as a transportation allowance contravenes the due process clause of the Fifth and Fourteenth Amendments. Plaintiff has alleged that by denying this particular deduction the regulations establish a conclusive presumption that her food purchasing power is in fact greater and her need less which, it is said is a presumption contrary to fact.

As was previously noted, the purpose of the Food Stamp Act was to stimulate the agricultural economy and provide supplemental assistance to families with nutritionally inadequate diets. By disallowing

the plaintiff's deduction for the travel allowance the Secretary has created a conclusive presumption that receipt of this travel allowance actually is a factor which decreases plaintiff's need, or qualification for the Food Stamp assistance. In fact, since the amount of the travel allowance must, and is, spent entirely to defray the costs of commuting, this presumption is contrary to fact.

The United States Supreme Court has shown increasing skepticism toward legislation by presumption because such legislation might permanently deprive citizens of important rights which more carefully drawn statutes would afford. See United States Dept. of Agriculture v. Moreno, supra; United States Dept. of Agriculture v. Murry, supra; Vlandis v. Kline (1973), 412 U.S. 441; Stanley v. Illinois (1972), 405 U.S. 645; Bell v. Burson (1971), 402 U.S. 535. In the instant case, for example, item (d) and 7 C.F.R. § 271.3(c)(1)(iii)(f) provide no safeguards for individual consideration of what effect the travel allowance actually has on an individuals ability to purchase a nutritionally adequate diet. By specific regulation this presumption is conclusively established. The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation. Stanley v. Illinois, supra, at 655. As the Court said in Stanley: "The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudi-

cation. But the Constitution recognizes higher values than speed and efficiency." *Id.* at 656.

The Court concludes that disallowance of the deduction, with no provision being made for the determination of the effect of the receipt of the travel allowance in light of the goals, purposes and procedures of the Act creates a conclusive presumption which is contrary to fact. This regulation thus lacks the critical requisites of due process required by the Fifth and Fourteenth Amendments to the United States Constitution.

Defendants cite Check [*sic*] v. Butz (N.D. Cal., filed June 4, 1975) involving the same regulations, which when applied to plaintiff forced her to pay an additional $15 per month for food stamps. The Court held that the evidence was so inconclusive that it was impossible for the Court to find the application to plaintiff frustrated the policies of the act. We are not confronted with such an inconclusive record. It has been stipulated that the transportation allowance was spent for the cost of transportation. Even if the case is interpreted to be contrary to the result reached here, we would not be inclined to follow it.

McInnis v. Weinberger (D.C. Mass., 1975), 388 F. Supp. 381 and Irazarry v. Weinberger (S.D. N.Y., 1974), 381 F. Supp. 1146, involved the problems created by the differing effect of the regulations in "cash-out" states and "non cash-out" states and are not factually applicable.

Patrick v. Tennessee Department of Public Welfare (E.D. Tenn., 1974), 386 F. Supp. 944, raised

equal protection objections to the inclusion of rent subsidy payments in calculating net income for food stamp purposes and the failure to include benefits under the low-income housing programs. The Court held that it was difficult if not impossible to calculate a monetary value for low rent housing benefits and that the classification was rationally related to a legitimate government interest. As previously pointed out, the record here is clear that the entire travel allowance is spent for travel expense.

This Court is therefore of the opinion that the challenged regulations in light of the reasons set out cannot be sustained. Consequently it will be ordered that defendants, their successors in office, their agents and employees and all other persons in active concert and participation with them should be permanently enjoined from including in the monthly net income of any person receiving same, any amount received by such person as reimbursement for necessary commuting expenses, pursuant to an Individual Education and Training Plan, unless such amount is deducted from such person's monthly net income in determining such person's adjusted net income. We conclude further that defendants should promptly recompute the adjusted net income for each person who is presently participating in food stamp program and who has been paying a wrongfully high price for his food stamp allotment because his adjusted net income has been improperly computed for the reasons set forth above, and make a forward

adjustment of the price of future stamps by reducing the price of food stamp coupons in future months by whatever amount necessary for as many months as necessary so as to fully compensate the recipient financially for food stamps wrongfully denied in the past. Steward v. Butz (W.D. Ky., 1973), 356 F. Supp. 1345, 1354; Bermudez v. U. S. Department of Agriculture (D. D.C. 1972), 348 F. Supp. 1279, 1281; Tindall v. Hardin (W.D. Pa., 1972), 337 F. Supp. 563, 566-67.

Consistent with this holding plaintiff's Motion for Summary Judgment is granted. Defendant's Motion for Summary Judgment is denied.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Civil No. 73-240-1

[Filed Oct. 10, 1975, R. E. Longstaff, Clerk,
U. S. District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other persons similarly situated, PLAINTIFFS

vs.

KEVIN J. BURNS, ET AL., DEFENDANTS

JUDGMENT ORDER

Before STEPHENSON, Circuit Judge, HANSON, Chief District Judge, and STUART, District Judge

PER CURIAM.

In accordance with the Memorandum Opinion filed in the above matter, the 10th day of October, 1975,

IT IS ORDERED that plaintiff's motion for summary judgment be, and hereby is, granted, and that defendant's motion for summary judgment be, and hereby is, denied.

IT IS FURTHER ORDERED that defendants, their successors in office, their agents and employees and all other persons in active concert and participation with them be, and hereby are, permanently enjoined from including in the monthly net income of any person receiving same, any amount received by such person as reimbursement for necessary commuting expenses, pursuant to an Individual Education and Training Plan, unless such amount is deducted from such person's net monthly income in determining such person's adjusted gross income.

IT IS FURTHER ORDERED that the defendants recompute the adjusted net income for each person who is presently participating in the food stamp program and who has been paying a wrongfully high price for his food stamp allotment, and that the defendants made [*sic*] a forward adjustment of the price of future stamps by reducing the price of food stamp coupons in future months by whatever amount necessary for as many months as necessary so as to fully compensate the recipient financially for food stamps wrongfully denied in the past.

/s/ Roy L. Stephenson
ROY L. STEPHENSON
Circuit Judge

/s/ William C. Hanson
WILLIAM C. HANSON
Chief District Judge

/s/ William C. Stuart
WILLIAM C. STUART
District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Civil No. 73-240-1

[Filed Nov. 7, 1975, R. E. Longstaff, Clerk,
U. S. District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other persons similarly situated, PLAINTIFFS

vs.

KEVIN J. BURNS, ET AL., DEFENDANTS

NOTICE OF APPEAL

Notice is hereby given that the federal defendants hereby appeal to the Supreme Court of the United States, pursuant to 28 U.S.C. 1253 and 2101, from the judgment of the three-judge District Court entered in this action on October 10, 1975.

DATED at Des Moines, Iowa, this 7th day of November, 1975.

Respectfully submitted,

EARL BUTZ
Secretary of Agriculture

by /s/ Allen L. Donielson
ALLEN L. DONIELSON
United States Attorney

/s/ James R. Rosenbaum
JAMES R. ROSENBAUM
First Assistant U. S.
Attorney

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JOINT APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 75-1261 & 75-1355

EARL BUTZ, SECRETARY OF AGRICULTURE,
Appellant

v.

KAREN HEIN, ET AL.,

AND

KEVIN J. BURNS, COMMISSIONER OF THE DEPARTMENT OF SOCIAL SERVICES OF THE STATE OF IOWA, ET AL.,
Appellants

v.

KAREN HEIN, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

JURISDICTIONAL STATEMENTS FILED
MARCH 5, 1976 AND MARCH 22, 1976

PROBABLE JURISDICTION NOTED JUNE 1, 1976

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 75-1261 & 75-1355

EARL BUTZ, SECRETARY OF AGRICULTURE,
Appellant

v.

KAREN HEIN, ET AL.,

AND

KEVIN J. BURNS, COMMISSIONER OF THE DEPARTMENT OF SOCIAL SERVICES OF THE STATE OF IOWA, ET AL.,
Appellants

v.

KAREN HEIN, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

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INDEX

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1973	
Oct. 19	Filed Pltf's. Motion to Proceed in Forma Pauperis.
Oct. 19	Filed Affidavit of Karen Hein.
Oct. 19	Filed Affidavit of Karen Hein Re: Poverty Status.
Oct. 24	Filed Order; Ordered that Karen Hein granted leave to proceed in forma pauperis & Clk. of Court file documents pertaining to above-entitled action that have been received to date; further ordered costs of filing waived; Stuart, J. (copies to attys.)
Oct. 24	Filed Complaint.
Oct. 24	Filed Pltf's. Motion for Appointment of Person to Serve Process under Rule 4, FRCP.
Oct. 24	Filed Order; Ordered that Ms. Dolores Thurman, doing business at 522 Mulberry Avenue, Muscatine, Ia., is appointed to serve summons & Complaint herein on Deft. Elizabeth Masterson.
Oct. 24	Filed Pltf's. Motion for 3-Judge Court.
Oct. 24	Filed Order: Court finds cplt. raises substantial issues which require adjudication by a 3-Judge Court under 28 U.S.C. ss2281 & 2284; The Honorable Chief Judge of the U. S. Court of Appeals, 8th Circuit is requested to convene a 3-Judge Court to hear & determine this case; Stuart, J. (copies to attys. copies included w/summons & cplt.
Oct. 24	Filed Pltf's. Motion for Preliminary Injunction.
Oct. 24	Filed Pltf's. Memorandum in Support of Motion for Preliminary Injunction.
Oct. 24	Issued Summons (Orig. & 1 copy) and forwarded to person apptd. for service of summons by cert. mail. on deft. Masterson.

DATE	PROCEEDINGS
1973	
Oct. 24	Issued Summons (Orig. & 1 copy) and deld. to U. S. Marshal. on deft. Burns.
Oct. 29	Filed Summons w/ret. on Elizabeth Masterson by Ms. Dolores Thurman, Court appointed to serve summons. Personal service 10-26-73.
Oct. 30	Filed Order; 8th CCA, ordered that Pat Mehaffy, Chf. Judge, 8th Circuit designates Circuit Judge Roy L. Stephenson, District Judge William C. Hanson, and District Judge W. C. Stuart to hear & determine action; P. Mehaffy, Chf. Judge, 8th Circuit. (copies to attys & to 3-Judge Court w/copy of file to Judges Hanson & Stephenson.
Nov. 1	Filed Notice & Order re: Discussing future course of litigation for hearing 11-9-73, at 2:30 in Des Moines, Iowa; Stuart, J. (copies cert. mail to defts.) copies to attys. copies to 3-Judge Court.
Nov. 19	Filed Summons w/mar's. ret. on Kevin J. Burns on 10-29-73; Lathrum, Dpty. Mar's. Fees $33.24.
Nov. 19	Filed Order; Ordered all motions to be filed by 5:00 pm 11-20-73; Pretrial stipulation of facts w/ report of facts still disputed to be prepared by parties & filed by 5:00 pm 11-28-73; pltfs. to file initial brief by 5:00 pm 12-11-73; Defts. file their brief by 5:00 pm 12-26-73; Pltfs. file reply brief if any by 1-4-74, 5:00 pm; Combined hearing on propriety of issuing preliminary relief on ultimate merits for 1-24-74, 10:00 am; Stuart, J. (copies to attys.) (copies to 3-Judge Court.)
Nov. 20	Filed Defts' Motion to Dissolve Three-Judge Court. (copies to 3-Judge Court.)
Nov. 20	Filed Defts' Motion to Dismiss & Motion for Summary Judgment. (copies to 3-Judge Court.)
Nov. 21	Filed Pltf's. Motion to Join Party Deft. (copies to 3-Judge Court.)

DATE	PROCEEDINGS
1973	
Dec. 5	Filed Pltf's. Amendment to Complaint (copies to 3-Judge Court.)
Dec. 5	Issued Summons (In accordance with Pltf's USM 285 forms) and deld. to U. S. Marshal for Service (Orig. & 2 copies 60 day)
Dec. 12	Filed Pltf's. Request for Extension of Deadline for Submitting Stipulations of Fact. (copies to 3-Judge Court.)
Dec. 12	Filed Pltf's. Resistance to Motions to Dismiss & For Summary Judgment. (copies to 3-Judge Court.)
Dec. 12	Filed Pltf's. Resistance to Motion to Dissolve 3-Judge Court. (copies to 3-Judge Court.)
Dec. 17	Filed Order, time for submitting stipulations of fact is extended to 1-4-74; Longstaff, Clk. Mgstr. (copies to attys.) (copies to 3-Judge Court).
Dec. 17	Filed Pltf's. Brief in Support of Motion for Preliminary Injunction. (copies to 3-Judge Court.)
Dec. 27	Filed Summons w/mar's. ret. on U.S.Dept. of Agriculture on 12-13-73 by U.S.Atty A. Donielson and on 12-17-73 by Robert Perry, Acting Officer-in-Charge of Foods & Nutrition Section Adkins, Dpty. Mar's. Fees $18.00.
1974	
Jan. 7	Filed Pltf's. Request for Extension of Time for Stipulations and for Reply Brief. (copy to 3-Judge Court.)
Jan. 8	Filed Order; Ordered that time for filing reply brief extended to one week after filing of brief by defts; time for filing stipulations extended to 1-14-74; Longstaff, Clk. Mgstr. (copies to attys. & D.W.) (copies to 3-Judge Court.)

DATE	PROCEEDINGS
1974	
Jan. 15	Filed Defts' Motion for Enlargement of Time.
Jan. 15	Filed Order; Ordered Defts. have to & including 1-22-74 to file Stipulation & Brief. Longstaff, Clk. Mgstr. (copies to 3-Judge Court) (copies to attys.)
Jan. 23	Filed Parties Stipulation. (copies to 3-Judge Court.)
Jan. 23	Filed Parties Stipulation No. 2. (copies to 3-Judge Court.)
Jan. 23	Filed Parties Stipulation No. 3. (copies to 3-Judge Court.)
Jan. 23	Filed Defts' Memorandum Brief in Support of Motion to Dismiss & Motion for Summary Judgment. (copies to 3-Judge Court.)
Jan. 24	Filed Clerk's Court Minutes Re: Oral Hearing on Preliminary Injct.; Entered: Oral comments by the Court. Pltf's. ex. 1,2,&3 offered & received. Defts. Ex.A,B&C. received. Dept. of U.S. Agr., moved to be dismissed from case; Counsel responded. Court took motion under submission. Arguments to Court by Counsel. Deft. State of Iowa granted 3 days to file further documents. Pltf. granted 5 days to respond. Court recessed at 12:10 pm Stephenson, Hanson & Stuart.
Jan. 25	Filed U.S.A. Dept. of Agriculture's Motion to Dismiss. (copies to 3-Judge Court.)
Jan. 25	Filed U.S.A. Dept. of Agr. Memorandum in Support of Motion to Dismiss. (copies to 3-Judge Court.)
Jan. 25	Filed U.S.A. Dept. of Agr's Certificate of Service Re: Memorandum in Support of Motion to Dismiss & Motion to Dismiss.
Jan. 25	Filed Defts' Production of Documents & Explanatory Affidavit. (copies to 3-Judge Court).

DATE	PROCEEDINGS
1974	
Jan. 25	Filed Court Reporter Melvin Durgin's Notes re: Hrg. on Preliminary Injct. (and ret. to Mr. Durgin.)
Feb. 5	Filed Pltf's Supplemental Brief (copies to 3-Judge Court.)
Feb. 5	Filed Pltf's Motion for Leave to Amend (copies to 3-Judge Court.)
Feb. 5	Filed Pltf's Motion to Join Party Deft (copies to 3-Judge Court.)
Mar. 4	Filed Memorandum & Ruling; Concluded that defts., successors, in office, agents & employees & all others in active concert & participation with them should be permanently enjoined from including in the "Monthly Net Income" of any person receiving same, any amt. received by such person as reimbursement for necessary commuting expenses pursuant to an Individual Training and Education Plan, unless such amount is deducted from such person's Monthly Net Income in determining such person's Adjusted net Income. Defts. should promptly recompute adjusted net incomes of such persons. All motions still pending where pltfs have attempted to add either Dept. of Agr. or Sec. of Agr. or both as parties to action, denied; costs to be taxed to defts. Judges Stephenson, Hanson & Stuart (copies to attys.) 47 OJ 64)
Mar. 4	Filed Memorandum and Order; Ordered defts., successors in office, agents, employees, & all others in active concert & participation with them should be permanently enjoined from including in "Monthly Net Income" of any persons receiving same, any amount received by such person as reimbursement for necessary commuting expenses pursuant to Individual Education & Training Plan, unless such

DATE	PROCEEDINGS
1974	
	amount is deducted from such person's monthly net income in determing such person's adjusted net income; further ordered defts. to promptly recompute adjusted net income for each person presently participating in food stamp program who has been paying a wrongfully high price for his food stamp allotment & charge such person the lesser amt. figured in compliance herewith for next purchase of food stamps & each subsequent purchase thereof; Pltfs motion still pending attempting to add eith Dept. of Agr. Or Sec. of Agr. as parties is denied; costs taxed to defts. and permanent Injct. to be issued by Clerk in accordance herewith; Stephenson, Cir. Judge, William C. Hanson, Chf. Dist. Judge, William C. Stuart, Dist. Judge. (47 OJ 63) copies to attys.
Mar. 6	Filed Judgment:
	Entered: Defts. shall promptly recompute adjusted net income for each person who is presently participating in the food stamp program & who has been paying a wrongfully high price for his food stamp allotment because his adjusted net income has been improperly computed, & charge such person the lesser amt. figured in compliance herewith for the next purchase of food stamps and each subsequent purchase thereof so long as such person receives such reimbursement for necessary commuting expenses; further ordered all motions still pending whereby pltfs. have attempted to add either Dept. of Agr. or Sec. of Agr. or both as parties to this action are denied. Further Ordered & adjudged that Clerk of Court shall issue a Writ of permanent injunction as ordered in Memorandum & Order filed 3-4-74 in this action; further ordered & adjudged that costs of this action are taxed to defts. & action stands dismissed; Longstaff, Clk. Mgstr. (47 OJ 66) copies to attys.

DATE	PROCEEDINGS
1974	
Mar. 6	Filed Injunction: Defts. Kevin J. Burns, ind. & in her capacity as Director of Muscatine County Dept. of Social Services, their successors in office, their agents & employees and all other persons in active concert or participation with them are hereby permanently enjoined from including in the "Monthly Net Income" of any person receiving same, any amt. received by such person as reimbursement for necessary commuting expenses pursuant to an Individual Education & Training Plan, unless such amt. is deducted from such person's monthly net income in determining such person's adjusted net income; Longstaff, Clk., Mgstr. (copies to attys.) 47 OJ 67
Mar. 13	Filed Defts' Motion for New Trial. (copies to 3-Judge Court.)
Mar. 14	Filed Pltf's Motion for Enlargement of Time. (copies to 3-Judge Court.)
Mar. 14	Filed Order; Ordered that Pltf. shall have up to & including 3-25-74, to file supplemental brief on issue of damages; Longstaff, Mgstr. (copies to attys.) (copies to 3-Judge Court.)
Mar. 25	Filed Pltf's Resistance to Motion for New Trial. (copies to 3-Judge Court.)
Mar. 26	Filed Pltf's. Supplemental Brief. (copies to 3-Judge Court)
Mar. 27	Filed Defts' Application for Stay. (copies to 3-Judge Court.)
Mar. 27	Filed Ruling on Motion for New Trial; Ordered defts' motion for new trial is denied; Stephenson, Circuit Judge/Hanson Chf. Dist. Judge; Stuart, Dist. Judge (copies to attys.) (47 OJ 124).
Apr. 8	Filed Pltf's 2nd supplemental Memorandum on Issue of Relief. (copies to 3-Judge Court.)

DATE	PROCEEDINGS
1974	
Apr. 12	Filed Defts' Memorandum on Issue of Relief (copies to 3-Judge Court.)
Apr. 22	Filed Deft's Notice of Appeal to the Supreme Court of the United States (I hereby certify that I mailed a copy of the Notice of Appeal to Robert Bartels, University of Iowa, College of Law, Iowa City, Iowa 52242, and to Barry A. Lindahl, Univ. of Iowa, College of Law, Iowa City, Iowa 52242, plaintiff's attorneys & to Robert DeKock, Muscatine Legal Assistance, Muscatine, Iowa, plaintiff's attorney, and to Lorna L. Williams, Special Assistant Attorney General, and Thomas R. Hronek, Assistant Atty. General State of Iowa, 4th Floor Lucas Office Bldg., Des Moines, Iowa 50319, attorneys for defendant.) R. E. Longstaff, Clk. by /s/ Gertrude Daniels, Deputy Clerk. (copies to 3-Judge Court.)
Apr. 29	Filed Defts. Request for Transcript of entire record to Clk. of Supreme Court of U.S.
Nov. 14	Motion and Order for Withdrawal of Robert DeKock. Copy to DeKock only
Dec. 12	Filed attested copy of Judgment of the Supreme Court of the United States: Ordered that judgment of U. S. Dist. Court is vacated & cause remanded for reconsideration in light of revision of regulations of Dept. of Agriculture. /s/ a True Copy, Michael Rodak, Jr., Clk. Supreme Court of U.S. by Julian Slyaugh, Dept. (copies to attys.) copies to 3-Judge Court.
Dec. 18	Filed Order; Ordered parties have to 1-17-75 to either agree on proper order upon remand in accordance with Order of Supreme Court or file appln. & Brief for appropriate action & reconsideration in light of revision of regulations of Dept. of Agr. Stuart, J. (copies to attys.) (copy to 3-Judge Court.)

DATE	PROCEEDINGS
1975	
Jan. 6	Filed Order; Ordered that order of 12-18-74 is rescinded; further ordered parties to action have to 1-17-75 to agree upon proper order on remand in accordance with Order of Supreme Court of U.S. or to file application & brief for appropriate action & reconsideration. Stuart, J. (copies to attys.) (copy to 3-Judge Court.)
Jan. 9	Filed Motion of pltf. to join Party Deft/Motion for leave to amend Complaint. copy to 3-Judge Court.
Jan. 9	Filed Motion for Order to Marshal to Service Process. (copy to 3-Judge Court)
Jan. 10	Filed Order; U.S. Marshal to service Sec. of Agr. Earl Butz, per amended complaint. Stuart, J. (copy to 3-Judge Court.)
Jan. 10	Issued Summons (Orig. & 4 copies 60 day) and deld. to U.S. Marshal
Jan. 14	Filed Summons w/mar's. ret. 1-13-75 of service by A. Donielson, U. S. Atty. Atty. General Wash., D.C. by cert. mail and Earl Butz, Sec. of Agri. by Cert. Mail. Lathrum, Dpty. Mar's. Fees $16.00.
Jan. 16	Filed Pltf's. Motion for Summary Judgment. (copy to 3-Judge Court.)
Jan. 17	Filed Defts' Motion for Summary Judgment; and Motion for Dismissal (copy to 3-Judge Court)
Jan. 17	Filed Defts' Brief in Support of Deft's. Motion for Summary Judgment; Motion to Dismiss. (copy to 3-Judge Court.)
Jan. 20	Filed Pltf's. Brief in Support of Motion for Summary Judgment.
Jan. 21	Filed Addl. Deft. Earl Butz's Application for Extension of time w/cert. of service.

DATE	PROCEEDINGS
1975	
Jan. 21	Filed Order, Deft. U.S.A. has to 3-14-75 to respond to pltf's. Motion for Summary Judgment; Longstaff, Clk. Mgstr. (copies to attys.)
Mar. 12	Filed Deft. Earl Butz' Appln. for Extension of time (copies to 3-Judge Court.) w/cert. of service.
Mar. 17	Filed Resistance To Application for Ext. of Time (pltffs)
Mar. 17	Filed Order Extending Time to/inc. 4-1-75. /s/ REL, Clk-Mag. Copies to 3-Judges and counsel.
Apr. 1	Filed Defts' Motion for Summary Judgment & Opposition to Pltfs' Motion for Summary Judgment, w/cert. of service. (copies to 3-Judge Court.)
Apr. 23	Filed Pltf's. Memo. in opposition to Deft. Butz's Motion for Summary Judgment. (copies to 3-Judge Court.)
May 2	Filed Deft. U.S.A.'s Motion for Leave to File Reply. (copy to 3-Judge Court) w/cert. of service.
May 5	Filed Pltf's. Motion for order permitting Barry Matsumoto, to appear as counsel on bhlf. of pltf.
May 6	Filed Pltf's Memorandum in Opposition to Deft. Butz's Motion for Leave to Reply. (copies to 3-Judge Court.)
June 3	Filed Deft. U.S.A.'s Reply to Pltfs' Memorandum in opposition to Motion for summary Judgment (copies to 3-Judge Court.) w/cert. of service.
July 3	Filed Pltfs' Supplemental Memorandum on Motion for Summary Judgment.
Oct. 10	Filed Memorandum; Pltf's. Motion for Summary Judgment granted. Deft's. Motion for Summary Judgment denied. Stephenson, Cir. Judge Hanson, Chf. Judge & Stuart, J's. (copies to attys.) (51 OJ 279) (copies to 3-Judge Court)

DATE	PROCEEDINGS
1975	
Oct. 10	Filed Judgment Order; Ordered Pltf's. Motion for summary judgment granted, deft's. Motion for summary judgment denied/. further ordered defts. their successors in office, agents & employees are permanently enjoined from including in monthly net income of any person receiving same any amt. received by such person as reimbursement for necessary commuting expenses, pursuant to Individual Education & Training Plan, unless such amt. is deducted from such person's net monthly income in determining such person's adjusted gross income. Further ordered defts. recompute the adjusted net income for each person who is presently participating in food stamp program & who has been paying a wrongfully high price for his food stamp allotment, & that defts. make a forward adjustment of price of future stamps by reducing price of food stamp coupons in future months by whatever amt. necessary for as many months as necessary so as to fully compensate recipient financially for food stamps wrongfully denied in past. Stephenson, Circuit Judge, Hanson, Chf. Dist. Judge, W. Stuart, Dist. Judge. (51 OJ 280) (copies to attys.) (copies to 3-Judge Court.)
Oct. 17	Filed Defts. Earl Butz, Sec. of Agr. and U.S.A.'s motion to Stay Judgment of 10-10-75. (copies to 3-Judge Court.) w/cert. of service.
Oct. 23	Filed Order: Ordered that judgment of this Court, entered Oct. 10, 1975, be & is hereby stayed until Dec. 9, 1975. (to allow defts time to determine viability of an appeal). /s/ Stephenson, Cir. J., Hanson, Chf. J., Stuart, Dist. J. (52 OJ 32) (copies to d-J's., Mr. Matsumoto, Atty. Gen'l. (Iowa) and U.S. Atty.

DATE	PROCEEDINGS
1975	
Nov. 7	Filed federal defts. Notice of Appeal fr. Judgment of 10-10-75. (I hereby certify that I mailed a copy of the foregoing Notice of appeal to Robert Bartels and Barry Matsumoto, University of Iowa, College of Law, Iowa City, Iowa 52242, attys. for plaintiff., and to Mrs. Lorna L. Williams, Spec. Asst. Atty. General, 4th Floor Lucas Office Bldg., Des Moines, Iowa 50319, and to Mr. Theodore R. Boecker, Asst. Atty. General, 4th Floor Lucas Office Bldg., Des Moines, Iowa, attys. for deft. Kevin J. Burns; and to Allen L. Donielson, U.S. Atty, Paul Zoss, Asst. U.S. Atty., and James R. Rosenbaum, 1st Asst. U.S. Atty., Room 113 U.S. Courthouse E. 1st & Walnut Streets, Des Moines, Iowa 50309, atty for federal defts. R. E. Longstaff, Clerk by: /s/ Gertrude Daniels, Dpty. Clk.)
Dec. 9	Filed Federal Defts. Notice of Appeal to 8th Cir. Court of Appeals fr. judgment of 3-judge Dist. Court entered 10-10-75. (I hereby certify that I mailed a copy of the foregoing Notice of Appeal to Mr. Barry Matsumoto, University of Iowa, College of Law, Iowa City, Iowa, attorney for plaintiff; and to Lorna L. Williams, Spec. Asst. Atty. General State Capitol Building ———, Des Moines, Iowa 50319, and to Mr. Theodore R. Boecker, Asst. Atty. General State of Iowa, 4th Floor Lucas Office Bldg., Des Moines, Iowa, attorneys for state defendants; and to Allen L. Donielson, U. S. Attorney. Paul Zoss, Asst. U. S. Attorney, and James R. Rosenbaum, Asst. U.S. attorney Room 113, U. S. Courthouse E. 1st & Walnut Des Moines, Iowa 50309, attys. for deft. Earl Butz, & U.S.A. R. E. Longstaff, Clk. by /s/ Gertrude Daniels, Dpty. Clk. (copies to 3-Judge Court.)
Dec. 8	Filed state defendants Notice of Appeal to 8th Circuit Court of Appeals fr. judgment of 3-judge

DATE	PROCEEDINGS
1975	
	Dist. Court entered 10-10-75. (I hereby certify that I mailed a copy of the foregoing Notice of appeal to Mr. Barry Matsumoto, University of Iowa, College of Law, Iowa City, Iowa, attorney for plaintiff; and to Lorna L. Williams, Spec. Asst. Atty. General State Capitol Building———, Des Moines, Iowa 50319, and to Mr. Theodore R. Boecker, Asst. Atty. General State of Iowa, 4th Floor Lucas Office Bldg., Des Moines, Iowa attorneys for state defendants; and to Allen L. Donielson, U. S. atty., Paul Zoss, Asst. U.S. Atty. and James R. Rosenbaum, Asst. U. S. Atty., Room 113, U. S. Courthouse, E. 1st & Walnut, Des Moines, Iowa 50309, attys. for Deft. Earl Butz & U.S.A. R. E. Longstaff, Clk. by /s/ Gertrude Daniels, Dpt. Clk. (copies to 3-judge court.)
Dec. 8	Filed State Defendants Notice of Appeal to Supreme Court of U.S. (I hereby certify that I mailed a copy of the foregoing Notice of Appeal to Barry Matsumoto, University of Iowa, College of Law, Iowa City, Iowa, atty. for plaintiff; and to Mrs. Lorna L. Williams, State Capitol Building, Des Moines, Iowa 50319 and Theodore R. Boecker, Spec. Asst. Atty. General, and Asst. Atty. General, respectively, 4th Floor Lucas Office Bldg., Des Moines, Ia., 50319, attys. for state defendants; and to Allen L. Donielson, U.S. Atty., Paul Zoss, Asst. U.S. Atty., and James R. Rosenbaum, Asst. U.S. Atty., Room 113, U.S. Courthouse, E. 1st & Walnut, Des Moines, Iowa 50309, atty. for Deft. Earl Butz, & U.S.A. R. E. Longstaff, Clk. by /s/ Gertrude Daniels, Dpty. Clk. (copies to 3-Judge Court.)
Dec. 9	Filed Deft. Earl Butz' Secretary of Ag. Motion to Stay. (copies to 3-Judge Court.)
Dec. 17	Filed Order: Ordered judgment entered 10-10-75 stayed to 1-8-75 [sic]. Stephenson, Circuit Judge,

DATE	PROCEEDINGS
1975	
	Hanson, Chf. District Judge, Stuart, Dist. Judge. (copies to attys.) Attested copy to 8th CCA. copies to 3-judge court.
Dec. 29	Filed attested copy of Order fr. 8th CCA, Ordered appeal stayed until further Order of Court. /s/ Robert C. Tucker, Clk. U.S. Court of Appeals, 8th CCA. A True Copy. (copies to attys. & to 3-Judge Court.)
1976	
Jan. 8	Filed Defts' E. Rutz & U.S.A.'s Motion to Stay. (copies to 3-Judge Court.) (Cert. of Service)
Jan. 12	Filed Order; Ordered Judgment of Court entered 10-10-75 stayed pending appeal to U. S. Supreme Court. Stephenson, Circuit Judge, William C. Hanson, Chief District Judge, William C. Stuart, District Judge; copies to attys. copy to 3-Judge Court; attested copy 8th CCA.
June 7	Filed attested copy of Notice fr. Supreme Court re: noting probable jurisdiction of case, and alloting a total of one hour for oral argument. /s/ a true copy, Michael Rodak, Jr. Clk. Supreme Court of US. by Laura P. Hill, Dpty. (copies to 3-Judge Court; copies to attys.)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

Civil Action Number 73-240-1

[Filed Oct. 24, 1973, R. E. Longstaff, Clerk, U.S. District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

KEVIN J. BURNS, Individually and in his capacity as Commissioner of Social Services; and ELIZABETH MASTERSON, Individually and in her capacity as Director of the Muscatine County Department of Social Services, DEFENDANTS

COMPLAINT

I.

Preliminary Statement

1. Plaintiff, individually and on behalf of all other persons similarly situated, seeks to have this Court declare invalid and enjoin the enforcement by the Defendants of a state regulation located in the Iowa State Department of Social Services Employees' Manual Section VII, Chapter 3, Page 16, Item d (hereinafter referred to as "Employees' Manual VII-3-16-d"). Employees' Manual VII-3-16-d and the actions of the Defendants are challenged on the grounds that they are in conflict with the guarantees contained in the Fifth and Fourteenth Amendments to the Constitution of the United States and the Civil Rights Act of 1964, and with federal statutes and regulations.

II.

Jurisdiction

2. This action is authorized by and brought under 42 U.S.C.A. § 1983, which provides a cause of action for the deprivation, under color of State law, of any right,

privilege, or immunity guaranteed by the Constitution and the laws of the United States.

3. Jurisdiction is conferred on this Court by 28 U.S.C. § 1343(3), which provides for original jurisdiction of this Court in suits to redress the deprivation, under color of State law, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

4. Jurisdiction is further conferred on this Court by 28 U.S.C. § 1337, which provides for original jurisdiction of this Court in any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

5. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, and by Rule 57 of the Federal Rules of Civil Procedure.

III.

Three-Judge Court

6. Insofar as Plaintiff seeks an injunction to restrain Defendants from the enforcement, operation, and execution of a State regulation on the ground that said regulation is contrary to the Constitution of the United States, this is a proper case for determination by a Three-Judge Court pursuant to 28 U.S.C. §§ 2281 and 2284.

IV.

Class Action

7. The named Plaintiff brings this action on her own behalf, and on behalf of all other persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure. The members of this class are all persons whose transportation allowances received under Individual Training Programs are included as income by the Department of Social Services in determining the price they must pay for their allotted food stamps, while at

the same time such allowances are specifically denied deduction status by virtue of Employees' Manual VII-3-16-d.

8. The requirements of Rule 23 are met in that the class is so numerous that joinder of all members is impractical, there are questions of law and fact common to the class, the claims of the representative party will fairly and adequately protect the interests of the class, and the party opposing the class has acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

V.

Parties

9. The Plaintiff, Karen Hein, is a divorced woman of 31 years of age whose household includes two minor children, ages 12 and 10.

10. Plaintiff is and has been during all relevant periods a resident of Muscatine County, Iowa.

11. Defendant Kevin J. Burns is the Commissioner of Social Services, and his office is the Department of Social Services for the State of Iowa, Des Moines, Iowa.

12. Defendant Elizabeth Masterson is Director of the Muscatine County Department of Social Services, and her office is the Department of Social Services for the County of Muscatine, Muscatine, Iowa.

VI.

Facts

13. On October 21, 1968, Plaintiff was divorced from her husband, and given custody of their two minor children. At about the same time, she became eligible for Aid to Dependent Children, food stamps and other welfare assistance.

14. On September 6, 1972, the Muscatine County Department of Social Services approved Mrs. Hein's Individual Training Plan, which provided for payment of

her tuition at Saint Luke's School of Nursing, Davenport, Iowa and for a $44 monthly allowance for transportation expenses for necessary commuting to Davenport from Muscatine under said Training Plan. At the same time, because of said transportation allowance, the purchase price of the amount of food stamps Plaintiff secured each month was increased from $46 to $58, since the Department of Social Services denied deduction status for transportation allowance in computing her monthly income, pursuant to Employees' Manual VII-3-16-d.

15. On November 3, 1972, Plaintiff appealed the decision of the Muscatine County Department of Social Services, and on February 14, 1973, the decision was affirmed by the hearing officer. The Commissioner of the Department of Social Services reaffirmed that decision on February 23, 1973.

16. Employees' Manual VII-3-16-d provides for deductions from income for the following:

> The total payments which are made to cover specific training costs; i.e., babysitting, child care, books, tuition, etc., when the recipient is participating in a training program sponsored by local, county, state or federal government. *Note* Transportation and other miscellaneous expenses such as uniforms, shoes, etc., are not to be considered specific training costs and are not deductible.

17. Federal regulations for the operation of the Food Stamp Program expressly allow deductions for the following household expenses:

> (e) Educational expenses which are for tuition and mandatory school fees, including such expenses which are covered by scholarships, educational grants, loans, fellowships, and veterans' educational benefits.
> 7 C.F.R. § 271.3(c) (1) (iii) (e).

18. The position of the Defendant Commissioner of the Iowa Department of Social Services is that the mileage allowance provided for the training program is not an allowable deduction and must be considered income for purposes of food stamp computation.

19. Since September, 1972, Plaintiff has been paying an additional $12 per month to buy her monthly amount of food stamps. This additional payment, because of Plaintiff's impoverished circumstances, results in a hardship on her and her children.

VII.

Causes of Action

20. FOR HER FIRST CAUSE OF ACTION, Plaintiff states that Employees' Manual VII-3-16-d is inconsistent with the federal regulations governing the operation of the Food Stamp Program in that 7 C.F.R. § 271.3 (c) (1) (iii) (e) provides for a deduction for mandatory educational fees such as Plaintiff's travel expenses, while the challenged state provision specifically denies such a deduction.

21. FOR HER SECOND CAUSE OF ACTION, Plaintiff states that Employees' Manual VII-3-16-d is inconsistent with the Federal Food Stamp Act, specifically 7 U.S.C. §§ 2011-2014, in that said State regulation

> a. does not mitigate, but rather exacerbates, the contribution of "the limited food purchasing power of low-income households . . . to hunger and malnutrition among members of such households" (§ 2011);
> b. does not permit, but rather prevents, "low-income households to purchase a nutritionally adequate diet through normal channels of trade" (§ 2011);
> c. denies assistance to some households "whose income and other financial resources are determined to be substantial limiting factors in permitting them to purchase a nutritionally adequate diet" (§ 2014 (a)); and
> d. ignores the special concern for persons participating in an "accredited school or training program" that is demonstrated in 7 U.S.C. § 2014(c).

22. FOR HER THIRD CAUSE OF ACTION, Plaintiff states that Employees' Manual VII-3-16-d deprives

her of due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution in that, by including the necessary transportation allowance in Plaintiff's income without allowing a corresponding deduction, Defendants have created an incorrect irrebuttable presumption that the Plaintiff has more disposable income with which to purchase food stamps by virtue of her receiving the allowance. This administrative mechanism, based on an irrebuttable presumption contrary to fact, fails to provide the Plaintiff critical due process rights set forth in *Stanley* v. *Illinois*, 405 U.S. 645 (1972), and *United States Department of Agriculture* v. *Murry*, —— U.S. ——, 41 U.S.L.W. 5099 (June 25, 1973).

23. FOR HER FOURTH CAUSE OF ACTION, Plaintiff states that Employees' Manual VII-3-16-d violates her right to equal protection guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution in that the challenged provisions creates distinctions between those who are participating in training programs and those who are not that are in no rational way related to the purposes of the Federal Food Stamp Program.

24. FOR HER FIFTH CAUSE OF ACTION, Plaintiff states that Employees' Manual VII-3-16-d violates her right to equal protection guaranteed by the Fourteenth Amendment to the United States Constitution in that the challenged provision creates arbitrary distinctions between different education expenses, thereby forcing Plaintiff to pay more for her food stamps because she receives a transportation allowance than do other persons, with exactly the same amount of disposable income, who receive non-transportation allowances, such as allowances for babysitting and books.

VIII.

Prayer for Relief

WHEREFORE, Plaintiff respectfully prays on behalf of herself and of all other persons similarly situated that this Court:

A. Assume jurisdiction of this cause, convene a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284 to determine this controversy, and promptly set this case down for a hearing.

B. Determine by order pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure that this action be maintained as a class action.

C. Pending a hearing and determination by a three-judge court grant a temporary restraining order, pursuant to 28 U.S.C. § 2284(3), enjoining Defendants and their successors in office, agents and employees, and all other persons in active concert and participation with them, from continuing to cause irreparable harm to the Plaintiff by including in her monthly income for the purpose of computing the cost of her monthly food stamps the amount reimbursed to her under the Individual Training Plan for necessary commuting expenses while specifically denying a deduction for the same.

D. Enter a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Rules 54, 57, and 58 of the Federal Rules of Civil Procedure declaring Employees' Manual VII-3-16-d invalid on the grounds that it is inconsistent with the provisions of the Federal Food Stamp Act, 7 U.S.C. §§ 2201, et seq., with 7 C.F.R. § 271.3, and with the Fifth and Fourteenth Amendments to the United States Constitution.

E. Enter a preliminary and permanent injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining Defendants, their successors in office, agents and employees, and all other persons in active concert and participation with them from including the amount reimbursed for necessary commuting expenses under an Individual Training Plan in the Plaintiff's monthly income for the purpose of computing her monthly food stamps price, without allowing a deduction for the same.

F. Order the Defendants and their successors in office to notify promptly by first class mail at their last known address all persons who have been paying higher prices for their monthly food stamps allowance because of Employees' Manual VII-3-16-d, that they will be pay-

ing from now on an adjusted figure, and state the new figure.

G. Grant this Plaintiff and all other persons similarly situated monetary damages in the appropriate amounts for food stamp prices wrongfully increased.

H. Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, allow Plaintiff costs herein.

I. Grant such additional or alternative relief as may seem to this Court to be just, proper, and equitable.

Respectfully submitted,

/s/ Robert Bartels
Robert Bartels
Attorney for Plaintiff
University of Iowa
College of Law
Iowa City, Iowa 52242
(319) 353-4031

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at his respective address as disclosed by the pleadings of record herein, with postage fully paid, and by depositing said envelope in a United States Post Office depository in Iowa City, Iowa on the 17th day of October, 1973.

/s/ Robert Bartels

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

Civil Action Number 73-240-1

[Copies to 3-Judge Court—1-23-74]

[Filed Jan. 23, 1974, R. E. Longstaff, Clerk, U.S. District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

KEVIN J. BURNS, Individually and in his capacity as Commissioner of Social Services; and ELIZABETH MASTERSON, Individually and in her capacity as Director of the Muscatine County Department of Social Services, DEFENDANTS

STIPULATION

It is stipulated between the parties to the above-entitled action that the following facts are admitted by both parties and shall be taken as true for the purposes of this action:

1. Ms. Karen Hein is a divorced woman 31 years of age, residing at 1114 Filmore, Muscatine, Iowa.
2. Ms. Hein's household includes two minor children, to wit:

Anthony G. Hein, born November 8, 1960
Wendy S. Hein, born July 26, 1963

3. Ms. Hein was granted a divorce from her husband on October 21, 1968, and was given custody of said minor children.
4. Immediately subsequent to the divorce, Ms. Hein became eligible for food stamps and other welfare assistance.
5. Ms. Hein petitioned the Muscatine County Department of Social Services to allow her to receive training

under an Individual Education and Training Plan so that she could eventually become a registered nurse.

6. On September 6, 1972, the Muscatine County Department of Social Services approved Ms. Hein's training plan, which provided for payment of her tuition at Saint Luke's School of Nursing in Davenport, the closest facility providing the desired training, and for a monthly Work and Training allowance for necessary commuting under said plan in the maximum allowable flat amount of $44.

7. At the same time that Ms. Hein's training plan was approved, the purchase price of the $92 worth of food stamps Ms. Hein was allowed to secure each month was increased from $46 to $58. Ms. Hein now receives $94 worth of food stamps for $58 as a result of an across-the-board increase to all food stamp recipients.

8. This $12 increase in the purchase price of Ms. Hein's food stamps was dictated because Iowa State Department of Social Services Employees' Manual Section VII, Chapter 3, Page 13, Items g and h include education-related transportation allowances such as Ms. Hein's as an item of ADC income, while Section VII, Chapter 3, Page 16, Item d excludes such payments in computing deductions for food stamp prices.

9. Ms. Hein sought administrative appeal of the increase in the price of her food stamps; on February 14, 1973, the original decision was sustained by the Muscatine Department of Social Services.

10. The Commissioner of Social Services reaffirmed the decision of the Muscatine Department of Social Services on February 23, 1973.

11. Since September, 1972, Ms. Hein has been paying the extra $12 per month for food stamps.

12. Ms. Hein has, during this period, continued to commute to Davenport to attend classes at Saint Luke's School of Nursing.

13. Prior to November 28, 1973, Ms. Hein had no savings, and only the following elements of income:

a. $28.75 a month rent from a house in which she owns a part interest;

b. $220 ADC;

c. $44 Work and Training Allowance; and

d. $36 food stamp bonus.

14. Prior to November 28, 1973, Ms. Hein's only assets were:

a. One-half of a brick house at 1114 Filmore, Muscatine;

b. One 1966 Ford; and

c. Personal clothing, kitchen utensils and household furniture with a total value of approximately $300.

15. Prior to November 28, 1973, Ms. Hein had liabilities amounting to approximately $14,000, and monthly expenditures averaging about $331 per month.

16. On or about November 28, 1973, Ms. Hein received a lump sum of money as a result of the death of her aunt; said money had been placed by Ms. Hein's aunt in a joint account. After payment of the aunt's funeral expenses, Ms. Hein received a total of $4,924.04.

17. With the knowledge and permission of the Muscatin Department of Social Services, this sum of $4,924.04 has been divided and disposed of as follows:

a.	$2,503.52	reduction of mortgage on home;
b.	120.52	check to bank to satisfy indebtedness on automobile;
c.	1,500.00	escrow account in bank for use in reducing outstanding mortgage on homestead and making essential repairs thereon;
d.	800.00	savings account.
	$4,924.04	

18. Although the receipt of the money described in the preceding two paragraphs may make Ms. Hein ineligible for public assistance for one month, she will subsequently continue to receive ADC and food stamp assistance as before.

19. It is further stipulated by and between the parties that if Ms. Hein were called to testify, she would testify that as a result of the $12 increase in the purchase price of the food stamps that Ms. Hein has needed to secure for herself and her family, she has been forced to:

a. Borrow from a private relief fund administered by the County;

b. Drive without automobile insurance;

c. Pay interest charges for late payment of gas and electric bills;

d. Do without telephone service for a period of time;

e. Buy less than her allotted food stamp coupons; and

f. Make do with less food and other necessities than is desirable for her family.

The foregoing stipulation does not waive objections by the parties with regard to relevance or admissibility of the evidence stated therein.

/s/ Robert Bartels

Attorney for Plaintiff

/s/ Lorna L. Williams
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

Civil Number 73-240-1

[1-23-74—Copies to 3-Judge Court]

[Filed Jan. 23, 1974, R. E. Longstaff, Clerk, U.S. District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

KEVIN J. BURNS, Individually and in his capacity as Commissioner of Social Services; and ELIZABETH MASTERSON, Individually and in her capacity as Director of the Muscatine County Department of Social Services, DEFENDANTS

STIPULATION NUMBER TWO

It is stipulated between the parties to the above-entitled action that the following facts are admitted by both parties and shall be taken as true for the purposes of this action:

1. It is stipulated that the United States Department of Agriculture Food and Nutrition Service on August 27, 1971, issued instructions which gave specific items which could be deducted from income upon a "hardship basis" for the purpose of figuring "net income" for food stamp purchases, but which did not expressly permit transportation costs connected with the WIN Program training to be deducted and which instructions ended the paragraph at the top of page 28 of Exhibit "C" attached hereto reading:

> Under no circumstances will deductions from income be made for 'hardships' except as provided in this section.

2. It is stipulated that the United States Department of Agriculture Food and Nutrition Services on November 17, 1972, approved the page of the manual material of the Iowa Department of Social Services which denies transportation among other enumerated WIN expenses itemized in the "Note" following paragraph d on page VII-3-16, Employees' Manual of the Iowa Department of Social Services and dated January 23, 1973.

These stipulations do not waive objections by the parties with regard to relevance or admissibility.

/s/ Robert Bartels
Robert Bartels

Attorney for Plaintiff

/s/ Lorna L. Williams
Lorna L. Williams
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

Civil No. 73-240-1

[Filed Jan. 23, 1974, K. E. Longstaff, Clerk, U.S. District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

KEVIN J. BURNS, Individually and in his capacity as Commissioner of Social Services; and ELIZABETH MASTERSON, Individually and in her capacity as Director of the Muscatine County Department of Social Services, DEFENDANTS

STIPULATION NO. 3

IT IS STIPULATED that if Donald L. Kassar, Chief of the Quality Control unit of the Iowa Department of Social Services, were called to testify herein, he would testify as follows:

1. That he and his unit is in charge of carrying out the Federal mandates verifying eligibility and correctness of the amount of issuance for the food stamp program and correctness of eligibility and payment for the ADC program pursuant to the Federal Food Stamp Act and Federal Social Security Act respectively;
2. That any money designated for transportation to an ADC recipient in connection with a work incentive program (or an approved training program under an Individual Education and Training plan) under the Social Security Act *and* any money designated for transportation to any student or trainee under scholarships, educational grants, loans, fellowships and veterans' educational benefits in connection with any schooling or training program is not in any said fact situations deducted when arriving at the "adjusted income" for food stamp purchases.

The foregoing stipulation does not waive objections by the parties with regard to relevance or admissibility of the evidence stated therein.

* /s/ _____

ROBERT BARTELS
Attorney for Plaintiff
University of Iowa
College of Law
Iowa City, Iowa 52242

/s/ Lorna L. Williams

LORNA L. WILLIAMS
Special Assistant Attorney
General of Iowa
Attorney for Defendants
Fourth Floor, Lucas Office Bldg.
Des Moines, Iowa 50319

* NOTE: Read via telephone to Mr. Bartels 1/23/74 and he said that he would sign this Stipulation tomorrow.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Civil No. 73-240-1

[Filed Mar. 4, 1974, R. E. Longstaff, Clerk, U.S. District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

KEVIN J. BURNS, Individually and in his capacity as Commissioner of Social Services, et al., DEFENDANTS

MEMORANDUM AND RULING

Before STEPHENSON, Circuit Judge, HANSON, Chief District Judge, and STUART, District Judge.

STUART, DISTRICT JUDGE.

This matter came on for hearing before this three-judge Court on the 24th day of January, 1973, on plaintiffs' motion for preliminary injunction. By agreement of the parties, the hearing on the ultimate merits of plaintiffs' claim was consolidated with the preliminary hearing. This Court was convened pursuant to 28 U.S.C. §§ 2281 and 2284 because plaintiffs are challenging a regulation of state-wide applicability promulgated by "an administrative board or commission acting under State statutes" and because several of the arguments raised by plaintiffs are of substantial constitutional import. Upon hearing the arguments of the parties and considering the documentary evidence and briefs filed herein, the Court makes the following findings of fact and conclusions of law.

I. Findings of Fact.

The named plaintiff, Karen Hein, is a divorced mother of two minor children residing in Muscatine, Iowa. Except for a short period, the duration and cause of which are not relevant herein, she has, at all times material, been eligible for and in receipt of food-stamp assistance made available pursuant to the Food Stamp Act of 1964, as amended, 7 U.S.C. §§ 2011, *et seq.*; and Iowa Code §§ 234.6, 234.11. In addition to her food stamp assistance, Mrs. Hein is participating in an Individual Education and Training Plan under the auspices of which she has been receiving training as a nurse at St. Luke's School of Nursing in Davenport, Iowa. To help defray the cost of commuting from Muscatine to Davenport, Mrs. Hein receives a travel allowance of $44 per month, all of which is spent for travel. Pursuant to the Iowa State Department of Social Services Employees' Manual § VII, ch. 3, p. 13, Item *j* [hereinafter Item *j*], this travel allowance is included as an item of income for determining "Monthly Net Income", for food stamp assistance purposes. Iowa State Department of Social Services Employees' Manual § VII, ch. 3, p. 16 Item *d* [hereinafter Item *d*], however, specifically denies the travel allowance deduction status in determining "Adjusted Net Income". Since it is this latter figure which directly determines the amount an individual must pay for his allotment of food stamps, plaintiff and the other members of the class she represents[1] have to pay more for food stamp aid because they are receiving their travel allowances, even though the allowances are spent entirely to defray commuting expenses and have no effect on their food purchasing power. The members of the class are thus placed in the unenviable position of being forced to choose between foregoing participation in a training program

[1] Plaintiffs have proposed that the class be defined so as to include all persons receiving transportation allowances pursuant to Individual Education and Training plans whose allowances are included as income in determining the price they must pay for their allotted food stamps but whose allowances are denied deductability by virtue of Item *d*. Defendants do not quarrel with this definition, and the Court hereby adopts it.

or attempting to stretch already meager resources a bit further in an attempt to obtain adequate nutrition.

II. Conclusions of Law.

Plaintiffs raise both statutory and constitutional challenges to the regulatory scheme which places them in this quandry [sic]. They claim, first, that the Iowa regulations are inconsistent with the Food Stamp Act and the regulations promulgated pursuant thereto by the Food and Nutrition Service of the Department of Agriculture. 7 C.F.R. §§ 270.1-271.9. In addition, however, plaintiffs also claim the Iowa scheme violates the due process clauses of the 5th and 14th amendments by creating a conclusive presumption which is seldom, if ever, borne out by reality, namely, that recipients of travel allowances have more money with which to purchase food because of their receipt of such allowances. *See* United States Department of Agriculture v. Murry (1973), 413 U.S. 508, 514; Vlandis v. Kline (1973), 412 U.S. 441, 452; Stanley v. Illinois (1972), 405 U.S. 645, 656-57. Additionally, plaintiffs raise equal protection objections to the scheme, suggesting that it creates an arbitrary distinction between recipients of travel allowances and other food stamp recipients which is unrelated to any legitimate governmental interest. *See* United States Department of Agriculture v. Moreno (1973), 413 U.S. 528, 533-38.

Despite plaintiffs' able briefing and argument of the constitutional questions, the Court has concluded that the issues before it may be resolved on a purely statutory basis. Mindful, therefore, of the admonition that constitutional questions should not be needlessly decided, the Court declines to express any opinion about the constitutionality of the state regulatory scheme.

Proceeding to the claim that Iowa's method of computing the amount certain households must pay for food stamps is inconsistent with the federal statute and regulations, the Court notes, as a general precept, that the Food Stamp Act of 1964 and the regulations appurtenant thereto are remedial in nature and entitled to broad,

generous interpretation. To treat the Act and regulations otherwise would be "to abuse the interpretative process and to frustrate the announced will of the people". A. H. Phillips, Inc. v. Walling (1945), 324 U.S. 490, 493.

Thus, when Congress expressly declares:

> It is hereby declared to be the policy of Congress, in order to promote the general welfare, that the Nation's abundance of food should be utilized * * * to safeguard the health and well-being of the Nation's population and raise levels of nutrition among low-income households. The Congress hereby finds that the limited food-purchasing power of low-income households contributes to hunger and malnutrition among members of such households. The Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of our agricultural abundances and will strengthen our agricultural economy, as well as result in more orderly marketing and distribution of food * * *. Food Stamp Act of 1964, § 2, 7 U.S.C. § 2011.

this Court must liberally construe those words and view with disfavor any regulation which neither promotes adequate nutrition among low-income households nor benefits our agricultural economy.

This is precisely the situation we are faced with in determining the validity of Item *d.* By denying recipients of travel allowances a deduction from "Monthly Net Income" for such allowances, the Department of Social Services, in effect, encourages the continuance of the very situation the food stamp program was created to alleviate. Since the travel allowances must be spent entirely to defray commuting expenses, receipt of such allowances has no effect on food purchasing power. Yet under the Iowa formula for computing food stamp cost, the travel allowance operates to increase the amount an

affected household must pay to purchase a given quantity of food. This is amply illustrated by the case of the named plaintiff. Without her $44 monthly travel allowance Mrs. Hein would have to pay $46 each month to obtain food stamps with a purchasing power of $94. Plaintiffs' Exhibit 1. With her travel allowance treated as it presently is under the Iowa scheme, she has to pay $58 each month for the same $94 worth of stamps.

In defense of this method of computing food stamp cost, the defendants point to 7 C.F.R. § 271.3(c)(1)(iii)(e), which provides, in part:

> (iii) Deductions for the following household expenses shall be made:
>
> • • • •
>
> (e) Educational expenses which are for tuition and mandatory school fees, including such expenses which are covered by scholarships, educational grants, loans, fellowships, and veterans' educational benefits.

Defendants interpret this regulation to limit deductions for educational expenses solely to expenses for tuition and mandatory fees. In effect, defendants would have the Court rewrite the regulation as follows:

> (e) Educational expenses which are for tuition and mandatory school fees, including *such expenses* [tuition and mandatory school fees] which are covered by scholarships, educational grants, loans, fellowships, and veterans' benefits. Defendants Memorandum Brief in Support of Motion to Dismiss and Motion for Summary Judgment, at 5. [Emphasis and parenthetical material in original.]

So interpreted, defendants argue, the regulation leaves no room for deduction of travel allowances, notwithstanding the fact that such allowances are made available to the plaintiffs by educational grants. Thus, defendants conclude, the provision in the Employees' Manual denying deductions for travel allowances is nothing more than state effectuation of the Department of Agriculture's

own regulation. Accordingly, if the federal regulation is valid, the state regulation, too, must be upheld.[2]

The Court need not consider the validity of the federal regulation in order to invalidate the state's, however, for we feel that the defendants read § 271.3(c)(1)(iii)(e) too narrowly. In view of the congressional declaration of policy quoted above and echoed by the Department of Agriculture in 7 C.F.R. § 270.1, a more reasonable interpretation of subsection (e), and the one adopted by this Court, is that the phrase "such expenses" refers not to "tuition and mandatory school fees", but to the general classification "educational expenses". So construed, the subsection may be read as allowing deduction of educational expenses including educational expenses which are covered by scholarships, educational grants, etc. This reading is far more nearly in accord with the purposes of the food stamp program in that it allows a deduction for an item of income, the travel allowance, which has no effect on food purchasing power. Accordingly, the Court is of the opinion that it is against this broader reading of subsection (e) that Item *d* must be judged.

Since the parties agree that the travel allowances are provided by educational grants, the Court concludes, on the basis of the above analysis, that Item *d* is inconsistent with, and thus invalidated by, subsection (e). Therefore, the Court holds that defendants should be enjoined from denying deductability for travel allowances forthwith.

Having determined that plaintiffs' claim is meritorious, there remain but two items to dispose of. Pursuant to defendants' contention that the Deparment of Agriculture was an indispensible party to this action, plaintiffs attempted to join it. That attempt was faulty, however, and the Department has resisted it. Since our

[2] At oral argument counsel for the defendants went even further, claiming that since the Department of Agriculture had approved the Employees' Manual, the provision denying deductability was not only consonant with, but mandated by, the Department's interpretation of the Food Stamp Act. Counsel has since retreated from his position and it is no longer seriously pressed.

decision does not involve a determination of the validity of any actions taken by the Department or any of its employees, neither the Secretary of Agriculture nor the Department need be a party herein, and the Department's notice to dismiss as to it should be granted.

Finally, the Court notes that plaintiffs' complaint includes a prayer for damages. The issue of damages was not discussed at oral argument or in the briefs of any of the parties, however, and no evidence has been introduced which would enable the Court to do anything but surmise the proper measure of a monetary award, should such an award be proper. Since plaintiffs' failure to address this issue raises some doubt about whether they seriously press the claim for monetary relief for the names plaintiff or the class she represents, the Court is of the opinion that the plaintiffs should be given two weeks from the date this order is signed in which to give the Court some indication of the status of their damage claim. In the event that plaintiffs do not respond within said period, the Court will consider the matter of damages closed and apply injunctive relief prospectively only.

We therefore conclude that defendants, their successors in office, their agents and employees, and all other persons in active concert and participation with them should be permanently enjoined from including in the "Monthly Net Income" of any person receiving same, any amount received by such person as reimbursement for necessary commuting expenses pursuant to an Individual Education and Training Plan, unless such amount is deducted from such person's Monthly Net Income in determining such person's Adjusted Net Income. We conclude further that defendants should promptly recompute the adjusted net income for each person who is presently participating in the food stamp program and who has been paying a wrongfully high price for his food stamp allotment because his adjusted net income has been improperly computed in the particulars set forth above, and charge such person the lesser amount figured in compliance herewith for the next purchase of food stamps and each subsequent purchase thereof so long as such person re-

ceives such a reimbursement for necessary commuting expenses.

Finally, all motions still pending whereby plaintiffs have attempted to add either the Department of Agriculture or the Secretary of Agriculture or both as parties to this action be and the same hereby are denied.

The costs of this action be and hereby are taxed to defendants.

An appropriate Order will issue forthwith.

[3-5-74—Copies to Attys.—Copies to 3-Judge Court]

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Civil No. 73-240-1

[Filed, Mar. 4, 1974, R. E. Longstaff, Clerk, U.S. District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

KEVIN J. BURNS, Individually and in his capacity as Commissioner of Social Services, et al., DEFENDANTS

MEMORANDUM ORDER

Before STEPHENSON, Circuit Judge HANSON, Chief District Judge, and STUART, District Judge.

PER CURIAM.

In accordance with the Memorandum Opinion filed in the above matter on the 4 day of March, 1974,

IT IS HEREBY ORDERED that defendants, their successors in office, their agents and employees, and all other persons in active concert and participation with them should be permanently enjoined from including in the "Monthly Net Income" of any person receiving same, any amount received by such person as reimbursement for necessary commuting expenses pursuant to an Individual Education and Training Plan, unless such amount is deducted from such person's monthly net income in determining such person's adjusted net income.

IT IS FURTHER ORDERED that defendants should promptly recompute the adjusted net income for each person who is presently participating in the food stamp program and who has been paying a wrongfully high

price for his food stamp allotment because his adjusted net income has been improperly computed in the particulars set forth above, and charge such person the lesser amount figured in compliance herewith for the next purchase of food stamps and each subsequent purchase thereof so long as such person receives such reimbursement for necessary commuting expenses.

IT IS FURTHER ORDERED that all motions still pending whereby plaintiffs have attempted to add either the Department of Agriculture or the Secretary of Agriculture or both as parties to this action be and the same hereby are denied.

IT IS FURTHER ORDERED that the costs of this action be and hereby are taxed to defendants.

IT IS FURTHER ORDERED that the Clerk of the Court issue a writ of permanent injunction in accordance herewith.

/s/ Roy L. Stephenson
ROY L. STEPHENSON,
Circuit Judge

/s/ William C. Hanson
WILLIAM C. HANSON,
Chief District Judge

/s/ William C. Stuart
WILLIAM C. STUART,
District Judge

(470J63)

[3-5-74: Copies to attys., copies to 3-Judge Court]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Civil No. 73-240-1

[Filed, Mar. 6, 1974, R. E. Longstaff, Clerk, U.S. District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

KEVIN J. BURNS, Individually and in his capacity as Commissioner of Social Services, et al., DEFENDANTS

JUDGMENT

This action came on for trial before the Court, Honorable Roy L. Stephenson, Circuit Judge, Honorable William C. Hanson Chief District Judge, Southern District of Iowa, and Honorable William C. Stuart, District Judge, Southern District of Iowa, presiding, and the issues having been duly tried and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED, that defendants shall promptly recompute the adjusted net income for each person who is presently participating in the food stamp program and who has been paying a wrongfully high price for his food stamp allotment because his adjusted net income has been improperly computed, and charge such person the lesser amount figured in compliance herewith for the next purchase of food stamps and each subsequent purchase thereof so long as such person receives such reimbursement for necessary commuting expenses.

IT IS FURTHER ORDERED AND ADJUDGED that all motions still pending whereby plaintiffs have attempted to add either the Department of Agriculture or

the Secretary of Agriculture or both as parties to this action are denied.

IT IS FURTHER ORDERED AND ADJUDGED that the Clerk of the Court shall issue a writ of permanent injunction as ordered in the "Memorandum and Order," filed March 4, 1974, in this action.

IT IS FURTHER ORDERED AND ADJUDGED that the costs of this action are taxed to defendants, and that the action stands dismissed.

Dated this 6th day of March, 1974.

/s/ R. E. Longstaff
R. E. LONGSTAFF
Clerk-Magistrate
U. S. District Court
Southern District of Iowa

(470J66)

[3-6-74: Copies to attys., copies to 3-Judge Court]

SUPREME COURT OF THE UNITED STATES

No. 73-1882

[Filed, Dec. 12, 1974, R. E. Longstaff, Clerk, U.S. District Court, Southern District of Iowa]

KEVIN J. BURNS, ETC., ET AL., APPELLANTS

v.

KAREN HEIN, ETC.

APPEAL FROM the United States District Court for the Southern District of Iowa.

THIS CAUSE having been submitted on the statement of jurisdiction and motion to affirm,

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the judgment of the said United States District ——— Court in this cause be, and the same is hereby, vacated, and that this cause be, and the same is hereby, remanded to the United States District Court for the Southern District of Iowa for reconsideration in light of the revision of the regulations of the Department of Agriculture. (See 7 C.F.R. § 271.3 (c) (1) (iii) (f).

November 11, 1974

A true copy MICHAEL RODAK, JR.
Test:

Clerk of the Supreme Court of the United States
Certified this ninth day of December, 1974

By /s/ Julian S. Garza, Deputy

[12-12-74: Copies to attys., copies to 3-Judge Court]

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Civil No. 73-240-1

[Filed Jan. 9, 1975, R. E. Longstaff, Clerk, U. S. District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other persons similarly situated, PLAINTIFF

v.

KEVIN J. BURNS, Individually and in his capacity as Commissioner of Social Services, et al., DEFENDANTS

MOTION TO JOIN PARTY DEFENDANT; MOTION FOR LEAVE TO AMEND COMPLAINT

COMES NOW the Plaintiff, by and through her attorney, and moves this Court, pursuant to Rules 15(a) and 20(a), F.R.C.P., (1) for an Order joining as a party defendant herein the Secretary of the United States Department of Agriculture, Earl Butz; and (2) for leave to amend the Complaint herein, as set forth in the attached Second Amendment to Complaint, to add the Secretary of Agriculture as a party defendant. In support of these motions, Plaintiff states as follows:

1. Although the present state Defendants are charged by 7 U.S.C. § 2019(b) with determining eligibility of households for food stamp assistance and are responsible for administering the Food Stamp Program at the local level, general supervision of the Program on the national level is the responsibility of the United States Secretary of Agriculture. (7 U.S.C. § 2019.)

2. On July 15, 1974, while this case was on appeal to the U.S. Supreme Court, 7 CFR § 271.3(c)(1)(iii)(e) was amended by the Department of Agriculture to conform to the Iowa Department of Social Services *Employees' Manual* VII-3-16-d.

3. On November 11, 1974, the United States Supreme Court vacated and remanded the decision of this Court herein "for reconsideration in light of the revision of the regulations of the Department of Agriculture. (See 7 C.F.R. § 271.3(c)(1)(iii)(f).)" Since the decision of this Court of March 4, 1974, was based on the Food Stamp Act, and not on federal regulations, the issue to be reconsidered on remand apparently is the indispensability of the Secretary of Agriculture under F.R.C.P. 19.

4. Although Plaintiff still does not believe that the Secretary of Agriculture is an indispensable party herein, joinder of the Secretary will eliminate this issue and thereby promote efficient resolution of this case.

5. Venue of this action properly lies in this Court under 28 U.S.C. § 1391(e) (see Plaintiff's Supplemental Brief of February 4, 1974, Part III).

WHEREFORE, Plaintiff prays that this Court:

A. Order that the Secretary of Agriculture, Earl Butz, be joined as a party defendant in this action;

B. Grant Plaintiff leave to amend her Complaint to add the Secretary of Agriculture as a defendant.

Respectfully submitted,

/s/ Robert Bartels
ROBERT BARTELS

/s/ Susan Bolton
SUSAN BOLTON
Legal Intern

University of Iowa
College of Law
Iowa City, Iowa 52242
(319) 353-4031

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at his respective address as disclosed by the pleadings of record herein, with postage fully paid, and by depositing said envelope in a United States Post Office depository in Iowa City, Iowa on the 7th day of January, 1975.

/s/ Robert Bartels

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Civil No. 73-240-1

[Filed Jan. 10, 1975, R. E. Longstaff, Clerk, U.S. District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other persons similarly situated, PLAINTIFF

v.

KEVIN J. BURNS, Individually and in his capacity as Commissioner of Social Services, et al., DEFENDANTS

SECOND AMENDMENT TO COMPLAINT

COMES NOW the Plaintiff, subject to leave of the Court, and amends her Complaint as follows:

1. By adding to the caption, as a party defendant, "EARL BUTZ, in his capacity as Secretary of the United States Department of Agriculture."
2. By adding to Paragraph 12 of the Complaint the following sentence: "Defendant Earl Butz is the Secretary of the United States Department of Agriculture, and as such is responsible for promulgating national standards and procedures for the administration of the Food Stamp Act (7 U.S.C. § 2019)."
3. By adding to Part VI of the Complaint (*"Facts"*) the following paragraph:

"20. On July 15, 1974, the Secretary of Agriculture amended the federal regulations governing the Food Stamp Program so that said regulations explicitly conformed with Iowa State Department of Social Services Manual VII-3-16-d (7 C.F.R. § 271.3(c) (1) (iii) (f)."

4. By striking paragraph 20 of the original Complaint.

Respectfully submitted,

/s/ Robert Bartels
Robert Bartels

/s/ Susan Bolton
Susan Bolton
Legal Intern

University of Iowa
College of Law
Iowa City, Iowa 52242
(319) 353-4031

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at his respective address as disclosed by the pleadings of record herein, with postage fully paid, and by depositing said envelope in a United States Post Office depository in Iowa City, Iowa on the 7th day of January, 1975.

/s/ Robert Bartels

SUPREME COURT OF THE UNITED STATES

No. 75-1261

EARL L. BUTZ, Secretary of Agriculture, APPELLANT

v.

KAREN HEIN, et al.

APPEAL from the United States District Court for the Southern District of Iowa.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is consolidated with No. 75-1355 and a total of one hour is allotted for oral argument.

June 1, 1976

SUPREME COURT OF THE UNITED STATES

No. 75-1355

KEVIN J. BURNS, etc., et al., APPELLANTS

v.

KAREN HEIN, et al.

APPEAL from the United States District Court for the Southern District of Iowa.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is consolidated with No. 75-1261 and a total of one hour is allotted for oral argument.

June 1, 1976

☆ U. S. GOVERNMENT PRINTING OFFICE: 1976 218795 279

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1261

EARL BUTZ, SECRETARY OF AGRICULTURE,

Appellant

vs.

KAREN HEIN, Individually and on behalf of all other persons similarly situated,

Appellee

No. 75-1355

KEVIN J. BURNS, Commissioner of the Department of Social Services of the State of Iowa, et al.,

Appellants

vs.

KAREN HEIN, etc.,

Appellee

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Pursuant to Rule 53(1) of the Rules of this Court, motion is hereby made that Appellee Karen Hein, individually and on behalf of the members of the class which she represents, be allowed to proceed in forma pauperis without prepayment of costs or submission of printed copies of the Motion to Affirm. In support of this motion, Appellee states as follows:

1. All members of the class represented by Appellee Hein are in poverty, in that they are all eligible for federal Food Stamp assistance.

2. Appellee was permitted to proceed in forma pauperis in the District Court.

3. Appellee's affidavit in support of this motion is attached hereto.

Robert Bartels
Counsel for Appellee
University of Iowa
College of Law
Iowa City, Iowa 52242

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1261
75-1355

EARL BUTZ, Secretary of Agriculture; and
KEVIN J. BURNS, Commissioner of the State
of Iowa Department of Social Services,

Appellant,

vs.

KAREN HEIN, et. al.,

Appellees

AFFIDAVIT

STATE OF IOWA)
) ss.
COUNTY OF MUSCATINE)

I, Karen Hein, being first duly sworn accoding to law, depose and say, in support of my Motion for Leave to Proceed In Forma Pauperis without being required to prepay costs or fees:

1. I am the Appellee in the above-entitled case.

2. Because of my poverty, I am unable to pay the costs of said case.

3. I am unable to give security for the same.

4. I believe I am entitled to the redress I seek in this case.

5. The nature of said case is briefly stated as follows: I brought a class action suit in forma pauperis before a three-judge United States District Court for the Southern District of Iowa seeking a declaratory judgment and injunctive against the Petitioners under Title 42 U.S.C. §1983.

The three-judge district court enjoined the Commissioner of Iowa State Department of Social Services from enforcing its statewide regulation disallowing any deduction for educational or training transportation expenses, for the purpose of computing the income of food stamp recipients and enjoined the Secretary of Agriculture from enforcing the analogous provisions of 7 C.F.R. 271.3(c)(1)(iii) on the grounds that those regulations conflict with the Food Stamp Act and deny due process and equal protection of the laws.

Karen Hein
Karen Hein

Duly witnessed and sworn to before me, a Notary Public, this 29th day of March, 1976.

Helen B VanDyke
Notary Public in and for Iowa

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1261

EARL BUTZ, SECRETARY OF AGRICULTURE,
Appellant

vs.

KAREN HEIN, Individually and on behalf of all other persons similarly situated,
Appellee

No. 75-1355

KEVIN J. BURNS, Commissioner of the Department of Social Services of the State of Iowa, et al.,
Appellants,

vs.

KAREN HEIN, etc.,
Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF IOWA

CENTRAL DIVISION

MOTION TO AFFIRM

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

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MOTION TO AFFIRM

Pursuant to Rule 16 of the Rules of this Court, Appellee moves that the final judgment and decree of the District Court be affirmed on the ground that the questions presented were correctly decided below and are so insubstantial as not to require further argument.

QUESTIONS PRESENTED

1. Did the District Court err in holding that Appellants violated the Food Stamp Act by decreasing Appellee's and her family's Food Stamp benefits on the sole basis that Appellee received a State/Federal grant for additional expenses in connection with her participation in a government-sponsored "Individual Education and Training Plan," all of which grant concededly was expended on necessary educational travel expenses and therefore was not available for family food purchases.

2. Did the District Court err in holding that the above-described actions of the Appellants violated the Equal Protection and Due Process guarantees of the Fifth and Fourteenth Amendments to the United States Constitution?

STATEMENT OF THE CASE

In October of 1968, Appellee Karen Hein was divorced and was awarded custody of her two minor children; at that time, she became eligible for welfare assistance, including AFDC and Food Stamps. In September of 1972, the Muscatine, Iowa, Department of Social Services approved Appellee Hein for an "Individual Education and Training Plan" under which she would receive training at the St. Luke's School of Nursing in Davenport, Iowa. This was the closest facility to Muscatine, Iowa, Appellee Hein's place of residence, that provided such training.[1] Under her Individual Education and Training Plan, Appellee was granted a training expense allowance of $44.00 per month, all of which was spent for necessary commuting.

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[1] The distance between Muscatine and Davenport is approximately 25 miles.

Because of Appellee Hein's receipt of this educational expense grant, the State Appellants,[2] consistently with state and federal regulations governing the Food Stamp Program, added $44.00 per month to Appellee Hein's "income" for purposes of calculating the price which she would have to pay in order to purchase a set amount of Food Stamp coupons for herself and her children. At the same time, the Appellants did not deduct from "income" Appellee's additional educational commuting expenses (although deductions are given under federal and/or state regulations for such educational expenses as tuition, fees, child care, and books). The end result was that Appellee Hein was required to pay $58.00 per month for $94.00 worth of Food Stamp coupons, rather than the $46.00 per month she was required to pay for the same amount of Food Stamps before she was approved for her Individual Education and Training Plan and received her grant for educational commuting expenses. In short, Appellee Hein's Food Stamp benefits, and hence her ability to purchase an adequate diet for herself and her two children, were reduced by at least $12.00 per month (or 25% of the benefits previously received),[3] solely on the basis of her receipt of a state-approved educational expense allowance, all of which was necessary for additional travel expenses in connection with her participation in a government-sponsored Individual Education and Training Plan and none of which was available for family food purchases.

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[2] Kevin J. Burns, Commissioner of the Department of Social Services of the State of Iowa, and Elizabeth Masterson, Director of the Muscatine, Iowa Department of Social Services, Appellants in No. 75-1355

[3] Under present Food Stamp purchase-price schedules, the increase in the purchase price for Appellee Hein would be $18.00. Moreover, it should be noted that unless a recipient such as Appellee can somehow divert sufficient funds from non-food expenses to make up for the increase in her Food Stamp purchase price, she will be unable to purchase her full allotment of Food Stamp coupons -- with the result that her food-purchasing power will be affected even more severely.

After pursuing administrative remedies, Appellee brought this action on her own behalf and on behalf of all other persons similarly situated, the class members being all persons whose transportation allowances received under Individual Education and Training Plans were included as "income" by the Department of Social Services in determining the price they must pay for their allotted food stamps. The rather lengthy and complex subsequent history of this action is adequately set out in the Jurisdictional Statement filed on behalf of Appellant Butz at pp. 8-10.

All Appellants now appeal from the unanimous Order of the District Court that the Appellants be

> permanently enjoined from including in the monthly net income of any person receiving same, any amount received by such person as reimbursement for necessary commuting expenses, pursuant to an Individual Education and Training Plan, unless such amount is deducted from such person's net monthly income in determining such person's adjusted net income. (402 F. Supp. at 408; Jurisdictional Statement of Appellant Butz at 24a-25a.)

In addition, the State Appellants complain of the District Court's order that the future price of Food Stamps for recipients in the class represented by Appellee be reduced in sufficient amount and for a sufficient period of time to compensate those recipients for Food Stamp benefits wrongfully denied in the past.

ARGUMENT

I.

AS APPLIED TO APPELLEE, THE FEDERAL AND STATE REGULATIONS CHALLENGED IN THIS ACTION VIOLATED THE FEDERAL FOOD STAMP ACT.

A. The District Court held that the Appellants' reduction of Appellee's family's Food Stamp benefits solely on the basis that Appellee was receiving a State grant for necessary travel expenses in connection with her participation in a State-sponsored "Indi-

vidual Education and Training Plan" violated the Food Stamp Act of 1964, 7 U.S.C. §§2011, et seq. (1970). This holding was based in part on the District Court's conclusion that one of the central purposes of the Food Stamp Act was to enable households with low food-purchasing power to obtain a nutritionally adequate diet -- a conclusion that is not challenged by the Appellants, and which is amply supported by the District Court's opinion, 402 F. Supp. at 404-405, Jurisdictional Statement of Appellant Butz at 12a-13a, and by the language[4] and legislative history[5] of the Food Stamp Act.

As applied to Appellee Hein and the class of recipients she represents, the state and federal regulations challenged in this action were directly contrary to the above-described purpose of the Food Stamp Act. The $44.00-per-month grant received by Appellee Hein was designed and used for additional expenses in connection with her participation in a State-sponsored training

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4 Section 2 of the Act, 7 U.S.C. §2011, provides that one purpose of the Act is to "raise levels of nutrition among low-income households," and further states a Congressional finding that "the limited food-purchasing power of low-income households contributes to hunger and malnutrition among members of such households." Moreover, 7 U.S.C. §2013(a) provides that the Food Stamp Program formulated by the Secretary should be one "under which . . . eligible households . . . shall be provided with an opportunity to obtain a nutritionally adequate diet . . ." Finally, 7 U.S.C. §2014(a) provides that participation in the Food Stamp Program "shall be limited to those households whose income and other resources are determined to be substantial limiting factors in permitting them to purchase a nutritionally adequate diet."

5 "The purpose of the Food Stamp Program is to assist low-income households to increase their expenditures for food . . ." Report of the House Committee on Agriculture, 1970 U.S. Code Cong. & Adm. News 6025,6027. See also, House Report No. 1022, Explanation of the Department of Agriculture, 1964 U.S. Code Cong. & Adm. News 3284; Message of the President, 1964 U.S. Code Cong. & Adm. News 3275, 3283.

program. These were necessary expenses which she would not otherwise have had to incur, and her grant did not in any way increase Appellee's ability to purchase an adequate diet for herself and her two children. Yet the Appellants substantially reduced the amount of Appellee's Food Stamp assistance solely because of her receipt of the grant. This decrease in Food Stamp benefits on the basis of a State grant that had no effect on Appellee's food-purchasing power was totally irrational, and directly violative of the Food Stamp Act's purpose to increase the food-purchasing power of low-income households so as to enable them to obtain a nutritionally adequate diet. 402 F. Supp. at 404-405, Jurisdictional Statement of Appellant Butz at 13a-14a. This violation was especially serious in light of the fact that it affected not only Appellee herself but her children as well.

B. The District Court also correctly found that the Appellants' regulations violated a second purpose of the Food Stamp Act. Section 5 of the Act, 7 U.S.C. §2014(c), provides that a household is not eligible for Food Stamp Assistance if an able-bodied member has failed to register for or accept employment -- unless that household member is a caretaker of dependents or a "bona fide student in any accredited school or training program, or employed and working at least 30 hours per week . . . ." As the District Court concluded, this provision demonstrates that "Congress sought to encourage food stamp recipients to secure education and training." 402 F. Supp. at 405; Jurisdictional Statement of Appellant Butz, at 15a. But the federal and state regulations challenged in this action undeniably discouraged participation in state-sponsored training programs by decreasing the food-purchasing power of recipients solely on the basis of their receipt of grants that made it possible for them to participate

in such programs, in violation of the Food Stamp Act.[6] Cf. Shea v. Vialpando, 416 U.S. 251 (1974).

C. Appellant Butz's asserted fear that the District Court's reasoning "would appear to require the Secretary to allow a deduction from gross income for all nonfood expenses . . . that may be deemed either necessary or socially desirable" (Jurisdictional Statement of Appellant Butz, at 13) ignores both the factual context of this case and the careful, unambiguous language of the District Court's Memorandum and Judgment Order. The District Court's opinion and order require only that the Appellants not include ultimately in the adjusted "income" figure that determines the level of a recipients' Food Stamp assistance any government grants received by the recipient specifically to defray additional expenses that are necessary to participation in a government-sponsored education and training program. Thus, the District Court's decision does not require itemized deduction even of educational travel expenses -- let alone other nonfood expenses -- but rather requires only that government education grants that by definition are not generally available for food, shelter, clothing, and so forth not be counted in "income" so as to reduce Food Stamp benefits. The Appellants plainly are still free under the District Court's decision to base the amount of Food Stamp assistance on the amount of a household's "income" -- such as wages, bank accounts, or AFDC payments -- that is generally available for food and nonfood expenses, without permitting itemized deductions for all nonfood expenses.

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6 In effect, the Appellants' regulations cause the Food Stamp Act and the State's Individual Education and Training Program, which is funded in part through Title XX of the federal Social Security Act, to work at cross purposes with one another: part of the assistance provided through the latter so that Appellee may obtain training that will make her self-sufficient is taken away by the former, so that her ability to provide her family with a nutritional diet is reduced. In short, the Appellants would give recipients such as Appellee a Catch-22 choice to either participate in training that would enable them to become economically self-sufficient, or feed themselves and their children adequately -- but not both.

D. The State Appellants' argument (Jurisdictional Statement, at 7) that Appellee could have diverted her monthly training expense grant from educational travel to food purchases by moving to Davenport is unsupportable by the record in this case or by common sense, and in any event misses the point of the District Court's Order. First, the State Appellants themselves approved Appellee's Individual Education and Training Plan -- which included her commuting between Muscatine and Davenport -- and stipulated in the District Court that her $44.00-per-month training expense grant was "for necessary commuting" in connection with that Plan.[7] Moreover, the State Appellants' argument assumes that Appellee did not really need any of her training expense grant to meet additional expenses attributable to her training program; but this assumption not only defies common sense, it is also directly contrary to the only possible justification for favoring Appellee with such a grant over other Food Stamp recipients who were not participating in an Individual Education and Training Plan -- that Appellee would have additional expenses on the order of $44.00 per month as a result of her training activities.[8] Finally, if the underlying assumptions of the State Appellants' argument were true, the District Court's order simply would not apply, since it was tailored to require exclusion from Food Stamp "income" only of "any amount received . . . for necessary commuting expenses . . . ."[9]

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7 Stipulation filed January 23, 1974, Paragraph 6 (emphasis added).

8 The State Appellants' argument also ignores the considerable expense and disruption that would be associated with moving a family from one city to another.

9 402 F. Supp. at 408, Jurisdictional Statement of Appellant Butz at 25a (emphasis added).

E. Both the Secretary and the State Appellants point to 7 C.F.R. 271.3(c)(1)(iii)(a), which provides for an exemption from Food Stamp "income" of 10% of any "income from compensation for services performed as an employee or training allowance not to exceed $30 per household per month," as a reasonable means of dealing with Appellee's training expense grant. However, even a cursory consideration of how this exclusion would apply to Appellee shows that it is grossly inadequate to cure the violations of the Food Stamp Act that are analyzed above and in the District Court's opinion. Under 7 C.F.R. 271.3(c)(1)(iii)(a), Appellee would be entitled to a total deduction of only $4.40 of her $44.00 training expense grant -- leaving her with $39.60 still added to "income", and consequently with a substantial deduction in Food Stamp benefits for her family, despite the fact that none of her grant was available as "income" for food-purchasing purposes.[10] Thus, even with the 10% deduction, a recipient in Appellee's position has substantially less food-purchasing power and is discouraged from pursuing training toward self-sufficiency under the federal and state regulations challenged herein.

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10 The 10% deduction provided for in 7 C.F.R. 271.3(c)(1)(iii)(a) may make sense when applied to earned income or other allowances that are generally available for family expenses for food, clothing, shelter, etc. But it does not make sense to include in "income" 90% of a grant that is specifically designed and used only for additional necessary expenses connected with education, since this is tantamount to saying that only ten percent of the grant really is necessary for such expenses.

II.

THE APPELLANTS' POLICIES ALSO VIOLATED THE FIFTH AND FOURTEENTH AMENDMENTS.

Although the District Court's holding that the Appellants' policies violated the Food Stamp Act effectively disposes of the action in favor of Appellee, the District Court also held in the alternative that the Appellants' policies violated the Equal Protection and Due Process Guarantees of the Fifth and Fourteenth Amendments.

A. Equal Protection.

The District Court correctly found that the challenged state and federal regulations created a distinction between two classes of food stamp recipients: (a) those receiving an allowance for necessary educational travel expenses, and (b) those not receiving such a grant. These two classes of recipients were similarly situated in terms of disposable income and food purchasing power, but were treated dissimilarly by Appellants with regard to the amount of Food Stamp assistance which they received. Using a "traditional", or "minimum rationality", test, the District Court found that this distinction did not further any purpose of the Food Stamp or any other legitimate governmental interest, and consequently held that it violated Equal Protection. 402 F. Supp. at 405-407; Jurisdictional Statement of Appellant Butz at 16a-19a. See also, U.S. Dept. of Agriculture v. Moreno, 413 U.S. 528 (1973).

The Secretary does not attempt directly to justify the classification invalidated by the District Court; rather, he suggests that the District Court's decision discriminates against a third group of recipients: those who have "commutation" expenses but who do not receive a travel allowance. (Jurisdictional Statement, at 14). It is of course true that under the District Court's Order, a Food Stamp recipient who spent X dollars per month on educational travel but who did not receive an off-setting grant

for this expense under an Individual Education and Training Plan would not be as well off economically as an otherwise similarly situated recipient who did receive such a grant from the government to cover the same expenses. But this difference would not be a result of the second recipient's receiving more Food Stamp assistance than the first (under the District Court's decision, both recipients would receive the same amount of Food Stamp benefits). Rather, any discrimination between the two recipients would be attributable solely to the second recipient's being favored with a governmental educational expense grant under his Individual Education and Training Program -- and not to the District Court's Order with regard to Food Stamp assistance.[11]

B. Due Process.

The District Court also held that the reduction of a recipient's Food Stamp assistance on the basis of her receipt of a grant for necessary commuting expenses in connection with an Individual Education and Training Plan created a conclusive presumption that such a recipient has greater food purchasing power -- and hence less need for Food Stamps -- because of that grant. This presumption properly was found to be "contrary to fact," primarily because the grant was designed and used "to defray the costs of commuting . . . ." 402 F. Supp. at 407; Jurisdictional Statement

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11 The arguments now made by Appellants to justify the above-described classification fail totally to meet the District Court's analysis. The main justification offered by the State Appellants -- the assertion that Appellee could have diverted her educational travel grant to food purchases by moving her family to Davenport -- has already been dealt with above in connection with the Food Stamp Act. And the second argument of the State Appellants, that the challenged regulations could deter Food Stamp recipients from "unduly prolonging their education" (Jurisdictional Statement, at 7) can have no sensible application in this case: Surely if the Appellants wished to discourage a Food Stamp recipient from "prolonging" her education, they would not give her an educational expense allowance or approve her for an Individual Education and Training Plan in the first place.

of Appellant Butz, at 19a-20a.

Clearly, the conclusive presumption enjoined by the District Court's decision in this case was at least as objectionable constitutionally as the presumption invalidated by this Court in U.S. Department of Agriculture v. Murry, 413 U.S. 508 (1973). While the legislative presumption involved in Murry might have been true in a substantial number of cases, grants for "necessary commuting expenses, pursuant to an Individual Education and Training Plan" cannot increase the food-purchasing power of the recipient thereof. See also, Vlandis v. Kline, 412 U.S. 441 (1973); Bell v. Burson, 402 U.S. 535 (1971). Weinberger v. Salfi, 422 U.S. 749 (1975), is clearly distinguishable. That case involved a legislative classification that was a reasonable means of effectuating Congressional concern with potential abuse of the Social Security program, while the instant case involves a totally nonsensical administrative policy that defeats the purposes of the Food Stamp Act.[12]

III.

THIS APPEAL PRESENTS NO ELEVENTH AMENDMENT ISSUE.

The State Appellants argue that the District Court's order that the future Food Stamp purchase prices of persons in the class represented by Appellee be recomputed so as to compensate them for benefits wrongfully denied in the past raises an Eleventh Amendment problem. This argument fails for at least three reasons. First, the costs that must be shared by the State of Iowa under 7 U.S.C. §2024 are only administrative costs, and not the cost of the Food Stamp coupons themselves. But these costs are no different

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12 Lavine v. Milne, _____ U.S. _____, 44 U.S.L.W. 4295 (1976), is even more clearly distinguishable, since it deals with a rebuttable presumption.

from the costs that are involved in any judicial decision that requires a future change in welfare administration, see, e.g., U.S. Department of Agriculture v. Murry, 413 U.S. 508 (1973), U.S. Department of Agriculture v. Moreno, 413 U.S. 528 (1973), Jiminez v. Weinberger, 417 U.S. 628 (1974), and do not require the kind of payment from the state treasury that is covered by Edelman v. Jordan, 415 U.S. 651 (1973). Second, 7 C.F.R. 271.1 (o)(11), by which States participating in the Food Stamp Program are bound, provides for essentially the same kind of "credit for . . .lost benefits" when it is determined that a household "has been improperly denied program benefits . . . ." Finally, the State Appellants failed to raise any Eleventh Amendment issue below, and this Court therefore should not consider it. McCullough v. Kammerer Corp., 323 U.S. 327 (1945).

IV.

THE ISSUES RAISED IN THIS APPEAL ARE NOT SUFFICIENTLY SIGNIFICANT TO REQUIRE FURTHER ARGUMENT.

As the District Court recognized, the federal and state regulations involved in this action, as applied to Appellee and the class she represented, were totally irrational and directly violative of the Food Stamp Act. At the same time, the District Court's Order was carefully and narrowly drawn so as to have relatively little precedential value[13] and only minimal practical impact on the Food Stamp Program. For these reasons, the issues presented in this appeal are not substantial, and no useful purpose would be served by further consideration thereof by this Court.

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[13] Thus, the District Court correctly distinguished cases, such as Chek v. Butz, U.S. District Court, N.D. Calif., No. C-75-0559CBR (1975), that appeared on the surface to have some similarities with this action. 402 F. Supp. at 408; Jurisdictional Statement of Appellant Butz at 21a.

CONCLUSION

For the reasons stated above, the unanimous decision of the three-judge District Court should be affirmed without further argument or briefing.

Respectfully submitted,

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APPENDIX A

Iowa Department of Social Services, Employees' Manual, Section XIII-8-5:

INDIVIDUAL EDUCATION AND TRAINING PLAN

* * *

Training Related Expense

Individual Education and Training Plan clients attending institutional training facilities are entitled to a training related expense allowance. Clients involved in part-time training plans receive 15¢/mile for those miles traveled between home, child care facility and training facility. The total monthly allowance however cannot exceed $45.00. Clients enrolled in full-time training programs are entitled to a full monthly TRE of $60.00. Full time is interpreted as being the period of time established by the training facility as being "full time". In the absence of such an established time framework, full time will be considered a minimum of 30 hours/week. Any plan involving fewer hours than the criteria established for full time will be considered part-time. Payment of TRE should commence for that month that the client begins training and must be terminated once the client has completed.

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BRIEF FOR THE APPELLANT

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OPINION BELOW

The opinion of the three-judge district court (J.S. App. A, pp. 1a–23a) is reported at 402 F. Supp. 398.

JURISDICTION

The order of the three-judge district court enjoining the Commissioner of the Iowa State Department of Social Services from enforcing its statewide regulation disallowing any deduction for educational or training transportation expenses, for purposes of computing the income of food stamp recipients, and enjoining the Secretary of Agriculture from enforcing

the analogous provision of 7 C.F.R. 271.3(c)(1)(iii)(*f*) on the grounds that those regulations conflict with the Food Stamp Act and deny due process and equal protection, was entered on October 10, 1975. A notice of appeal to this Court (J.S. App. C, pp. 26a–27a) was filed on November 7, 1975.[1] On December 30, 1975, Mr. Justice Blackmun extended the time for docketing the appeal to and including February 5, 1976, and on January 27, 1976, he further extended the time to and including March 6, 1976. The appeal was docketed on March 5, 1976. On June 1, 1976, this Court noted probable jurisdiction and ordered that this case be consolidated with *Burns* v. *Hein,* No. 75–1355, in which probable jurisdiction also was noted on that date.

The jurisdiction of this Court is conferred by 28 U.S.C. 1253, which authorizes a direct appeal by any party from an order granting an injunction in any civil action required to be heard by a three-judge district court. A three-judge district court was required in this case, which was brought by appellees to enjoin, on constitutional grounds, the Commissioner of the Iowa State Department of Social Services from enforcing an Iowa administrative regulation having statewide effect. 28 U.S.C. 2281; *Board of Regents* v. *New Left Education Project,* 404 U.S. 541, 542. Appellees moved to join the Secretary as a party defendant because the applicable federal regulations, which

[1] The Secretary also filed a notice of appeal to the United States Court of Appeals for the Eighth Circuit. On motion of the Secretary, that court on January 7, 1976, stayed all proceedings pending further order.

are binding on the states, contain a provision similar to the Iowa regulation. The district court ordered joinder pursuant to Rule 19(a)(1), Fed. R. Civ. P., and asserted subject matter jurisdiction over the claims against the Secretary under 28 U.S.C. 1337. Cf. *United Mine Workers* v. *Gibbs,* 383 U.S. 715, 725–726; *Rosado* v. *Wyman,* 397 U.S. 397, 402–405; *Moor* v. *County of Alameda,* 411 U.S. 693, 713 and n. 29. Accordingly, this Court has jurdisction over the Secretary's appeal. See, *e.g., Sterling* v. *Constantin,* 287 U.S. 378, 393–394.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Food Stamp Act of 1964, 78 Stat. 703 *et seq.,* as amended, 7 U.S.C. (and Supp. V) 2011 *et seq.,* and regulations promulgated thereunder are set forth in the Appendix, *infra,* pp. 1A to 8A.

QUESTION PRESENTED

Whether regulations that include training allowances in income, while disallowing an itemized deduction for incidental training expenses, for purposes of determining eligibility for participation in and amount of benefit under the food stamp program, conflict with the Food Stamp Act or deny equal protection or due process.

STATEMENT

1. The Food Stamp Act of 1964, 78 Stat. 703 *et seq.,* as amended, 7 U.S.C. (and Supp. V) 2011 *et seq.,* authorizes the Secretary of Agriculture to administer a food stamp program under which low-income house-

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holds may purchase allotments of coupons that can be exchanged for food at approved retail stores. The face value of a coupon allotment is set at a level intended to enable the household to obtain a nutritionally adequate diet, as determined by the Secretary. 7 U.S.C. (Supp. V) 2016(a). An eligible household pays less than face value for its allotment of coupons. 7 U.S.C. 2013(a).[2]

The size of the discount allowed to the purchasing household depends principally upon the household's income. The Secretary is authorized to "prescribe the amounts of household income and other financial resources, including both liquid and nonliquid assets, to be used as criteria of eligibility" for participation in the program (7 U.S.C. (Supp. V) 2014(b)), and to establish standards for determining the amount eligible households must pay for their coupons (the purchase requirement), which "shall represent a reasonable investment on the part of the household, but in no event more than 30 per centum of the household's income." 7 U.S.C. 2016(b).

The Secretary is further authorized to promulgate regulations "not inconsistent with [the Act], as he deems necessary or appropriate for the effective and efficient administration of the food stamp program." 7 U.S.C. 2013(c). Pursuant to this authority, the Sec-

[2] The federal government redeems the coupons at their face value, thereby absorbing the difference between the face value and the price the household paid for the coupons. 7 U.S.C. 2013(a) and 2018; see 7 C.F.R. 272.4 and 272.5.

retary has promulgated regulations defining "income" for purposes of determining a household's eligibility and computing its purchase requirement. With some exceptions, "income" generally includes all monies received. 7 C.F.R. 271.3(c)(1)(i). In particular, the Secretary has determined that payments received by a household from federal assistance programs are to be treated as income; his regulations specifically provide that "income" includes "[p]ayments received from federally aided public assistance programs, general assistance programs, or other assistance programs based on need [and] [p]ayments received from Government-sponsored programs such as Agricultural Stabilization and Conservation Service programs, the Work Incentive Program, or Manpower Training Program." 7 C.F.R. 271.3(c)(1)(i)(*f*) and (*g*).

The Secretary's regulations further provided that certain expenses are allowable as deductions from income. 7 C.F.R. 271.3(c)(1)(iii).[3] In particular, the regulations allow an itemized deduction for "[t]uition and mandatory fees assessed by educational institutions" (7 C.F.R. 271.3(c)(1)(iii)(*f*)), and a standardized monthly deduction of 10 percent of any training allowance, or $30, whichever is less, to cover all inci-

[3] These regulations have been amended. Instead of itemized deductions for certain expenses, including education, the new regulations provide for a standardized deduction for all households. 41 Fed. Reg. 18788 (1976). However, the Secretary has been preliminarily enjoined from enforcing these regulations. *Trump* v. *Butz*, No. 76–0933, order entered June 18, 1976 (D.D.C.).

dental expenses, such as books, school supplies, meals at school, and transportation. 7 C.F.R. 271.3(c)(1)(iii)(*a*).[4]

Each participating state is charged with the responsibility of certifying eligibility and computing purchase requirements under the standards set forth in the Secretary's regulations. 7 U.S.C. (and Supp. V) 2019 (b) and (e).

2. Appellee Karen Hein is the head of a household that is eligible for assistance under the Food Stamp Act (Jt. App. 23).[5] Prior to September 1972, she was paying $46 for $92 worth of coupons (Jt. App. 24), the maximum allotment then available to her household. In that month, appellee was granted assistance under the State of Iowa's Individual Education and Training Plan for training as a registered nurse (*ibid.*). The plan was federally aided pursuant to Title IV of the Social Security Act, 49 Stat. 620, 627, as amended, 42 U.S.C. 601 *et seq.* (see 34 Fed. Reg. 1354, 1359–1360 (1969)).[6] The assistance to appellee in-

[4] The standardized percentage deduction is computed on the basis of the total training allowance, including any separate allowance for incidental expenses such as transportation. Thus, if, for example, an eligible individual receives a monthly tuition allowance of $200 and a separate monthly allowance for incidental expenses of $44, his monthly standardized deduction would be $24.40. In addition, the full $200 tuition payment would also be deductible.

[5] "Jt. App." refers to the joint appendix filed in this case and *Burns* v. *Hein*, No. 75–1355.

[6] Programs of this nature currently are authorized by Title XX of the Social Security Act, 42 U.S.C. (Supp. IV) 1397 *et seq.*

cluded payment of her tuition at Saint Luke's School of Nursing in Davenport, Iowa, and a monthly allowance of $44 to cover transportation expenses incurred in connection with attending the school (Jt. App. 24).

The monthly allowance of $44 was included in appellee's income for the purpose of determining her household's purchase requirement (*ibid.*).[7] She was not allowed a fully offsetting deduction for her transportation expenses.[8] Accordingly, her income, and consequently the amount she was required to pay for her monthly allotment of coupons, increased as a result of the receipt of the monthly allowance (*ibid.*).

After exhausting state administrative remedies, appellee commenced this action in the United States District Court for the Southern District of Iowa, on behalf of herself and others similarly situated, seeking to enjoin state officials from including the monthly allowance in her income for food stamp purposes (Jt. App. 15–22). Appellee contended that the state regulations requiring such inclusion, and denying a fully offsetting deduction for travel costs, were incon-

[7] It does not appear from the record whether the monthly *pro rata* share of the tuition payments made on appellee's behalf also was included in her income, as required by 7 C.F.R. 271.3(c)(1)(i)(*g*). Appellee would, in any event, have been entitled to an offsetting deduction for the amount of tuition paid. See pages 5–6 and note 4, *supra*.

[8] The record is silent both as to appellee's actual transportation expenses and as to whether appellee received the standardized deduction for incidental expenses to which she became entitled under 7 C.F.R. 271.3(c)(1)(iii)(*a*). See note 4, *supra*.

sistent with the Food Stamp Act and denied her equal protection and due process (Jt. App. 19–20).[*]

The three-judge district court, convened pursuant to 28 U.S.C. 2281, held that the state regulation disallowing an itemized deduction for travel and other miscellaneous training expenses was inconsistent with the then applicable federal regulation, which allowed a deduction generally for "[e]ducational expenses which are for tuition and mandatory school fees * * *." 7 C.F.R. 271.3(c)(1)(iii)(*e*) (1973 rev.). The district court enjoined the state defendants from further enforcement of the state regulation disallowing an itemized deduction for such travel expenses. *Hein* v. *Burns*, 371 F. Supp. 1091 (Jt. App. 31–42). This Court vacated that judgment and remanded for reconsideration of the case in light of the Secretary's intervening promulgation of 7 C.F.R. 271.3(c)(1)(iii)(*f*), which amended the prior regulation specifically to exclude incidental training expenses, such as transportation costs, from the educational or training expenses that may be itemized and deducted in computing a household's net income. 419 U.S. 989 (Jt. App. 43).

On remand, the district court granted appellee's

[*] The suit was brought prior to the promulgation of the Secretary's regulations at issue here. At that time, however, Iowa State Department of Social Services Manual, Section VII, ch. 3, p. 13, Item *j*, required inclusion of travel allowances in income, and Section VII, ch. 3, p. 16, Item *d*, of the Manual further provided:

"Transportation and other miscellaneous expenses such as uniforms, shoes, etc., are not to be considered specific training costs and are not deductible."

motion (Jt. App. 44–45) to join the Secretary as a party defendant. The court held invalid both the state and the amended federal regulations that denied a deduction for transportation and other miscellaneous educational expenses. The court reasoned that since "[c]ommuting expenses * * * reduce the level of actually available income" (402 F. Supp. at 405; J.S. App. A, p. 15a), "disallowance of the plaintiff's transportation allowance as a deduction, is a regulatory interpretation inconsistent with * * * the remedial purposes of the act" (*ibid.*). The court further determined that those regulations deny equal protection by arbitrarily distinguishing "between those food stamp recipients who receive * * * travel allowances, and those who do not, even though both classes are similarly situated in terms of disposable income and purchasing power" (402 F. Supp. at 406; J.S. App. A, p. 16a), and that the regulations also deny due process because they rest upon a conclusive presumption that provides "no safeguards for individual consideration of what effect the travel allowance actually has on an individual's ability to purchase a nutritionally adequate diet" (402 F. Supp. at 407; J.S. App. A, p. 20a).

The court enjoined the state and federal defendants "from including in the monthly net income of any person * * * any amount received by such person as reimbursement for necessary commuting expenses, pursuant to an Individual Education and Training Plan, unless such amount is deducted from such per-

son's monthly net income in determining * * * adjusted net income" (402 F. Supp. at 408; J. S. App. A, p. 22a). The court also ordered the state and federal defendants to "make a forward adjustment of the price of future stamps by reducing the price of food stamp coupons in future months by whatever amount necessary for as many months as necessary so as to fully compensate the recipient financially for food stamps wrongfully denied in the past" (402 F. Supp. at 408; J. S. App. A, pp. 22a–23a).[10]

SUMMARY OF ARGUMENT

A.1. The inclusion of training allowances in income for the purpose of determining eligibility for and extent of entitlement to food stamp benefits is proper. Congress understood and intended that federal assistance payments generally would be included in the calculation of income under the Food Stamp Act. Receipt of such payments enhances a household's comparative economic position and thereby reduces the household's relative need for further assistance in the form of food stamps.

Training allowances are like other assistance payments in this respect. Such allowances are paid without regard to the recipient's actual incidental training expenses. To the extent that the allowance is not needed for such expenses, or is used to cover expenses that the household previously had been incurring without assistance, the allowance adds directly to the

[10] Accordingly, this case will not become moot if the amended regulations (note 3, *supra*) are put into effect.

amount of household funds available for normal expenses, such as food. Even if the allowance is used entirely to defray a new incidental training expense, the household is better off, by the amount of the allowance, than other households which incur similar expenses without the benefit of an allowance.

2. The disallowance of an itemized deduction for incidental training expenses also is reasonable. As a general matter, Congress did not intend that all nonfood expenditures be deductible; to the contrary, Congress intended that "income" under the Act would include funds needed by the household to meet nonfood expenses. Moreover, the Secretary has found that allowance of itemized deductions for nonfood expenditures tends to favor households with higher incomes, since such households are able to spend more on nonfood items.

Furthermore, actual training commutation costs, the type of expense incurred by appellee, vary widely among households. The variance to a large extent derives from personal consumption choices, such as the method of transportation utilized, and such choices should not be permitted to affect eligibility determinations under the Act.

The disallowance of an itemized deduction for training transportation expenses is not inconsistent with the allowance of such a deduction for tuition and other mandatory educational fees, nor is it inconsistent with any purpose in the Act to support education. Unlike transportation expenses, tuition is a large, fixed cost that has no counterpart in the budgets of

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the normal household, and the allowance of an itemized deduction for such an expense is therefore appropriate. The Secretary does allow a standardized deduction, and that deduction gives sufficient encouragement to those ~~purchasing~~ pursuing training or employment.

B. The Secretary's regulations comply with the requirements of equal protection and due process. By reflecting the real difference in need levels between households whose training expenses are defrayed by an allowance and those whose training expenses are not so defrayed, the Secretary's regulations conform more closely to the ideal of equal protection than does the district court's solution, which fails to account for this distinction. The disallowance of an itemized deduction for training transportation expenses also achieves equity by placing households incurring such expenses in the same position as households incurring identical expenses in connection with work. The Secretary has properly rejected as inconsistent with the Act the alternative of allowing a deduction for all transportation expenses, or more broadly, for all non-food expenditures. Instead, by minimizing the number of available deductions, and by applying the regulations evenly, the Secretary has achieved an equitable and economically sound allocation of food stamp benefits.

Nothing more than that is required by the Due Process Clause. Regulations which effect the distribution of welfare benefits need not conform to a standard of universal truth. Due process, an essentially pragmatic concept of governance, is afforded by regu-

latory classifications which, although not mathematically precise, reasonably approximate that which would be achieved by individual adjudication. Food stamp benefits, like many other forms of assistance, are appropriately and constitutionally allocated on the basis of income. The regulations at issue here reasonably define income and therefore give effect to the legislative choice in a constitutionally permissible manner.

ARGUMENT

REGULATIONS THAT INCLUDE TRAINING ALLOWANCES IN INCOME, WHILE DISALLOWING AN ITEMIZED DEDUCTION FOR INCIDENTAL TRAINING EXPENSES, FOR PURPOSES OF DETERMINING ELIGIBILITY FOR PARTICIPATION IN AND AMOUNT OF BENEFITS UNDER THE FOOD STAMP PROGRAM, DO NOT CONFLICT WITH THE FOOD STAMP ACT OR DENY EQUAL PROTECTION OR DUE PROCESS

The district court's analysis in this case rested upon two fundamental misconceptions. The first of these concerned the nature of the allowance received by the appellees. The court understood the allowance to constitute a reimbursement of actual travel expenses. This view of the allowance underpinned the court's analysis of each aspect of the case. The court's conclusion that the Secretary's regulations are inconsistent with the remedial purposes of the Food Stamp Act was based upon the reasoning that since "the travel allowance is spent entirely to defray commuting expenses * * *, receipt of such allowance has no effect on food purchasing power" (402 F. Supp. at 405; J.S. App. A,

p. 13a). Similarly, the court's holding that the regulations deny equal protection was premised upon the assumption that "[t]he travel allowance in question * * * [is] utilized entirely to defray commuting expenses" (402 F. Supp. at 406; J.S. App. A, p. 17a), and therefore that "those food stamp recipients who receive such travel allowances and those who do not * * * are similarly situated in terms of disposable income and purchasing power" (402 F. Supp. at 406; J.S. App. A, p. 16a). And with regard to due process, the court stated that "since the amount of the travel allowance must [be], and is, spent entirely to defray the costs of commuting, [the] presumption [that receipt of the allowance reduces need] is contrary to fact" (402 F. Supp. at 407; J.S. App. A, p. 20a).

The court's understanding of the nature of the allowance, an understanding that so pervasively determined its decision in this case, was incorrect. The training allowance in question was paid pursuant to a state regulation that directed that "[a] work and training allowance of forty-four [now sixty] dollars per month shall be provided to a person participating in a full-time training plan" (Appellant's Br. in No. 75–1355, App. D, p. 6a). Although the allowance is made available to cover the incidental expenses, such as travel costs, incurred in connection with participation in a training program, the regulation does not specify to what end the money need be spent. Recipients are free to use the allowance as they please;

they are not required to submit an accounting of expenses. Indeed, recipients are entitled to the full amount of the allowance whether or not they actually incur any commuting or other incidental training expenses. See also Appellant's Br. in No. 75–1355, at 7.

In short, the basic factual assumption upon which the district court's decision rested was false. The training allowance need not be spent entirely to defray commuting or other incidental training expenses. To the extent that the allowance exceeds those expenses in any individual case, it directly enhances the recipient's disposable income. Since the district court's analysis, in all respects, is rooted in the premise that the allowance would never increase the recipient's disposable income, that analysis cannot support the judgment below.[11]

A second fundamental misconception is evident in the district court's repeated insistence on the primary importance of the impact of incidental education ex-

[11] Moreover, implicit throughout the court's analysis is the further assumption that an individual who does not receive a training allowance will not incur any expenses similar to those the allowance is intended to cover. Such an assumption is the only evident basis for the court's assertion that "those food stamp recipients who receive * * * travel allowances and those who do not * * * are similarly situated in terms of disposable income * * *" (402 F. Supp. at 406; J.S. App. A, p. 16a). But the assumption is without any apparent factual support. Food stamp recipients not covered by Iowa's education and training program may nevertheless incur incidental training expenses. Between two otherwise similarly situated individuals with the same expenses, the one who receives a training allowance quite obviously is better off than the one who does not.

penses on "food purchasing power." In essence, the district court's rationale for invalidating the Secretary's disallowance of an itemized deduction for such expenses was that amounts expended on nonfood items, such as travel, decrease "food purchasing power" and therefore must be deducted from the household's income for purposes of computing food stamp benefits. See 402 F. Supp. at 404–405; J.S. App. A, pp. 11a–15a. In so reasoning, the court mistook the statutory eligibility criterion to be "food purchasing power," whereas in fact it is "income."

In enacting the Food Stamp Act, Congress intended to "raise levels of nutrition among low-income households." 7 U.S.C. 2011. Congress authorized the Secretary to "prescribe the amounts of household income * * * to be used as criteria of eligibility." 7 U.S.C. (Supp. V) 2014(b). The choice of "income," rather than of a more elusive concept such as "food purchasing power," as the basic eligibility criterion is both understandable and appropriate. The awkwardness of the latter as an eligibility criterion becomes apparent from even brief consideration of the implications of the district court's reasoning. That reasoning, if applied generally, would appear to require the Secretary to allow a deduction from gross income for all nonfood expenses, or at least all such expenses that a reviewing court would subsequently deem either necessary or socially desirable, in order to arrive at a net figure representing "food purchasing power." But such an accounting determination would necessitate a close, detailed analysis of

individual household budgets and presumably would entail complicated reporting and certification requirements. Such a procedure would be seriously burdensome on the Secretary and households alike. Moreover, Congress presumably realized that to permit households to exclude from the Secretary's consideration amounts spent on nonfood items would create a serious risk that the food stamp program would be abused. An evaluation of need based only on the amount of unexpended funds remaining available for the purchase of food—"food purchasing power," as the term was used by the district court—might make it possible for households with incomes sufficiently high to justify their exclusion from the program to obtain food stamp assistance on the basis of heavy, discretionary, nonfood expenditures. Accordingly, to the extent that the district court's decision rests upon the primacy of "food purchasing power," rather than of income, in the statutory scheme, that decision cannot stand.

With these considerations in mind, we turn now to the specific issues presented by this case—whether the Secretary's regulations are reasonable under the Act and satisfy the requirements of equal protection and due process.

A. THE SECRETARY'S REGULATIONS ARE CONSISTENT WITH THE FOOD STAMP ACT

Congress intended that the operative definition of "income" be established by the Secretary, who is authorized to "issue such regulations, not inconsistent

with [the Act], as he deems necessary or appropriate for the effective and efficient administration of the food stamp program." 7 U.S.C. 2013(c). Congress therefore has given the Secretary wide latitude to exercise his judgment in determining what regulatory definition of "income" is "appropriate" for the "effective and efficient administration of the * * * program." [12]

Regulations promulgated under a statute by one charged with its administration are entitled to great weight. See, *e.g., Train* v. *Natural Resources Defense Council,* 421 U.S. 60, 87. This is especially true where, as here, the statute explicitly grants the administrator broad discretion. In *Mourning* v. *Family Publications Service, Inc.,* 411 U.S. 356, 369, for example, this Court stated:

> Where the empowering provision of a statute states simply that the agency may "make . . . such rules and regulations as may be necessary to carry out the provisions of this Act," we have held that the validity of a regulation promulgated thereunder will be sustained so long as it is "reasonably related to the purposes of the enabling legislation." [Footnote omitted.]

Indeed, in such cases the "construction of a statute by

[12] Congress has consistently recognized that the Food Stamp Act grants the Secretary broad discretion in the formulation of standards and guidelines. See, *e.g.*, 110 Cong. Rec. 7139 (1964) (remarks of Rep. Hutchinson); 110 Cong. Rec. 7153 (1964) (remarks of Rep. Hoeven); 116 Cong. Rec. 42003 (1970) (remarks of Rep. Foley); 115 Cong. Rec. 26737 (1969) (remarks of Sen. Ellender).

those charged with its execution should be followed unless there are compelling indications that it is wrong." *Red Lion Broadcasting Co.* v. *Federal Communications Commission,* 395 U.S. 367, 381, quoted with approval in *New York Dept. of Social Services* v. *Dublino,* 413 U.S. 405, 421. See also *Udall* v. *Tallman,* 380 U.S. 1, 16–18. Under this standard, as we now show, the Secretary's regulations at issue are plainly valid.

1. The inclusion in income of payments received from public assistance programs is reasonable

a. The Secretary's general inclusion in income of federal assistance payments is proper. Such assistance enlarges the amount of financial resources generally available to the household and is appropriately taken into consideration in determining the household's need for further assistance in the form of food stamps.

In this case, for example, appellee Karen Hein was receiving $220 per month under the federal program of aid to families with dependent children (Jt. App. 25). Under 7 C.F.R. 271.3(c)(1)(i)(*f*), these payments are included in her income for the purpose of evaluating her need for food stamp assistance. This is an entirely reasonable result. Appellee is better off, by the amount of the AFDC payment, than one who is otherwise in the same economic position but who is not receiving such assistance, and, consequently, she has relatively less need for further assistance.

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Appellee's position is comparable to one who receives $220 per month in wages. As explained by a Department of Agriculture official in testimony before the House Committee on Agriculture prior to enactment of the Act, it was intended that families receiving income from public assistance would be treated in the same manner as families whose income derived from other sources:

> Take two families of four, one is receiving aid to dependent children assistance—they get an ADC check for $100 a month. Another family over here is receiving no public assistance of any sort. The man is working 2 days a week. He has an income of $100 a month from his job. Both of these families of four would have $100 income. Therefore, both would pay the same amount for their coupons and get the same bonus. It is based on income and not the source of the income.

Hearings on H.R. 5733 (Food Stamp Plan) before the House Committee on Agriculture, 88th Cong., 1st Sess. 86–87 (1963).

More than 90 percent of food stamp recipients also receive some other form of federal aid. Food and Nutrition Service, Department of Agriculture, *Food Stamp Program, A Report in Accordance With Senate Resolution 58, for the Senate Committee on Agriculture and Forestry*, 94th Cong., 1st Sess. 12 (Committee Print, 1975) (hereinafter cited as *Resolution 58 Report*).[12] Nothing in the Act requires the

[12] Approximately 30 percent of food stamp recipients receive assistance from three or more other federal programs. *Ibid.*

Secretary to ignore this fact. On the contrary, Congress understood and expected that federal assistance payments would be included in household income for the purpose of determining eligibility and benefits under the Act. For example, in explaining the effect of a proposed amendment to the Act, the Senate Committee on Agriculture and Forestry stated (S. Rep. No. 91-292, 91st Cong., 1st Sess. 10 (1969) (emphasis added)):

> No household would be required to pay more than 30 percent of its income (including welfare payments, of course, since *for all purposes under the act the term "income" includes welfare payments*).

Thus, the Food Stamp Act establishes an income maintenance program that supplements household income only after other forms of assistance have been taken into account. Congress has chosen to exempt certain kinds of public assistance from being included in the beneficiary's income for the purpose of allocating food stamp benefits. See, *e.g.*, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1902, 42 U.S.C. 4636; 7 C.F.R. 271.3(c)(1)(ii). Absent such a specific legislative exemption, however, payments received from public assistance are properly included in the income figure used by the Secretary in administering the food stamp program.

b. In addition to a monthly AFDC payment, appellee Hein also received assistance under the State of Iowa's Individual Education and Training Plan for

the expenses of training as a registered nurse. The assistance covered certain specified expenses, such as tuition, and also included a $44 monthly allowance. So long as she remained in the training program, appellee was free to spend that allowance as she saw fit. See pages 14–15, *supra*. Like the AFDC payments, the $44 monthly allowance was "income" to appellee in every meaningful sense of the word. Such an allowance improves the lot of those who receive it relative to those who do not, and the Secretary's determination to take it into account as "income" for the purpose of evaluating the recipients' need for further assistance under the Food Stamp Act accordingly is reasonable.[14]

The fact that the allowance is made available to cover incidental training expenses does not affect that conclusion. In the first place, an individual may receive the allowance without incurring any incidental training expenses. In that case the allowance effects an increase in the absolute amount of income the household has available for its usual expenses. Inclusion of the allowance in income in such circumstances is plainly appropriate.

Inclusion is just as appropriate when the allowance is used for expenses which are "incident" to the training program but which the household previously had been incurring without assistance. Meals purchased at

[14] Under the Secretary's regulations the allowance for tuition is also included in income. See 7 C.F.R. 271.3(c)(1)(i)(*f*), (*g*), and (*j*). But, since the cost of tuition is a deductible expense (7 C.F.R. 271.3(c)(1)(iii)(*f*)), such an allowance does not result in a net increase in income under the Act.

the trainee's place of instruction, for example, replace meals consumed at home or at work. Similarly, commutation expenses incurred incident to the training program may replace expenses theretofore incurred in commuting to work or in traveling for other purposes. The receipt of an allowance to defray such ordinary living expenses frees a like amount of the household's income for other expenses.

The allowance is properly included in income, moreover, even if it is used to defray new incidental expenses incurred in connection with the training program. Such expenses otherwise would have to be met out of other income or resources. Inclusion of the allowance in income gives appropriate recognition to the fact that households whose incidental training expenses are defrayed by an allowance are better off, by the amount of the allowance, than those whose expenses are not so defrayed.

The Secretary's regulation requiring inclusion of public assistance, including the kind of allowance received by appellee Hein here, thus advances the food stamp program toward the appropriate objective that "benefit distribution should be 'horizontally' equitable so that households in equal financial situations receive equal benefits." *Resolution 58 Report, supra,* at 87. Excluding such an allowance from income, as appellee would have this Court require of the Secretary, would have the improper consequence of favoring public assistance recipients whose expenses are covered by an allowance over households that meet similar ex-

penses out of earned income. Cf. *Resolution 58 Report, supra,* at 16.

It is illustrative to compare the situation here with the Secretary's similar treatment of governmental assistance payments made on behalf of a household to third parties. Under Section 101, Housing and Urban Development Act of 1965, 79 Stat. 451, as amended, 12 U.S.C. 1701s, for example, the Secretary of Housing and Urban Development is authorized to pay a rent supplement on behalf of low-income families. Such assistance increases the family's income, although it may or may not affect its "food purchasing power." If the family uses the assistance to reduce its rental costs, that part of the family's income no longer needed for rent will represent an increase in the amount of income which is available for other expenses, including food. If, on the other hand, the family uses the assistance to rent a better house, the amount of income available for food is not increased. In either event, the rent supplement is properly included in income for purposes of the Food Stamp Act. 7 C.F.R. 271.3(c)(1)(i)(*f*) and (*h*). In sustaining the correctness of this regulation, the Court of Appeals for the Sixth Circuit observed (*Compton* v. *Tennessee Department of Public Welfare,* 532 F. 2d 561, 565):

> We * * * recognize * * * that the Secretary's policy at first impression seems to penalize low-income families with a forced choice between decent housing and food. It is evident though that the policy is not an illusory choice between food and housing, but rather a means of equalization between those whose housing costs are partially defrayed and those families who alone must bear the full burden of housing.

A similar analysis is appropriate here. An allowance for incidental training expenses may or may not enlarge the absolute amount of household income available for food. But, in either event, by helping to defray expenses which otherwise would have to be defrayed from other income, the allowance places the recipient in a better position on a comparative income scale than if he or she did not receive the allowance, and, thus, such assistance is a relevant factor in evaluating the recipient's need for further benefits under the Food Stamp Act.[15]

2. The disallowance of an itemized deduction for incidental training expenses is also reasonable

Although the district court's remedial order barred the Secretary from including the $44 monthly allow-

[15] Appellee suggests (Mot. to Aff. 7 n. 6) that the Secretary's inclusion of the training allowance in income causes the Food Stamp Act to work at cross purposes with the federally aided state program. It is true that, in obtaining eligibility for both food stamp and training assistance, appellee received an amount which, although greater than that to which she would be entitled from either program individually, was less than she would have received had neither program been designed to take account of the other. But that does not make the Secretary's regulation unreasonable. As we have explained (pages 19–21, *supra*), Congress intended as a general matter that the Secretary would take account of other assistance payments in evaluating a household's need for food stamps. There are exceptions to this rule where Congress has specifically provided that a certain type of payment not be counted as income (see page 21, *supra*). Assistance payments received from federally aided state training programs are not within any of those exceptions.

ance in income unless a fully offsetting deduction were allowed (J.S. App. B, pp. 24a–25a), the court did not hold the regulation pertaining to inclusion invalid. The focus of the district court's analysis appeared to be upon the Secretary's disallowance of an itemized deduction for incidental training expenses, and only the regulations disallowing such a deduction —7 C.F.R. 271.3(c)(1)(iii)(*f*) and the comparable state regulations—were expressly invalidated (402 F. Supp. at 405; J.S. App. A, p. 15a). We have just demonstrated that the inclusion of the allowance in income is reasonable. As we now show, disallowance of an itemized deduction also is reasonable.

a. The district court held that a deduction must be allowed for training travel, or commutation, expenses, because the amounts so expended are unavailable for the purchase of food, *i.e.*, because such expenses "decrease * * * food purchasing power" and "reduce the level of actually available income" (402 F. Supp. at 405; J.S. App. A, p. 15a). As we have already explained (pages 15–17, *supra*), that holding is based upon a misperception concerning the eligibility criterion under the Act, and upon reasoning that would appear to require the Secretary to allow an itemized deduction from gross income for all, or at least a very wide variety of, other nonfood expenses. That result plainly was not within the contemplation of Congress.

To the contrary, Congress understood and intended that a household's "income," as determined by the Secretary, would include amounts needed for nonfood items. In 7 U.S.C. 2016(b), Congress provided that

"households shall be charged for the coupon allotment issued to them, and the amount of such charge shall represent a reasonable investment on the part of the household, but in no event more than 30 per centum of the household's income." As former Secretary of Agriculture Clifford M. Hardin explained, the 30 percent limitation was included to prevent hardship, "in view of [the household's] other needs." Hearings on the President's Message on Hunger and Malnutrition and S. 6, S. 339, S. 1608, S. 1864, and S. 2014 (Food Stamp Program and Commodity Distribution) before the Senate Committee on Agriculture and Forestry, 91st Cong., 1st Sess. 389 (1969). Those "other needs" are the nonfood items that a family normally requires. Congress limited the maximum expenditure that would be required of a family for food, so that the household could meet its nonfood expenses out of the "income" figure which the Secretary uses to evaluate need for food stamp assistance.

Contrary to the analysis of the district court, therefore, it is not improper for the Secretary to disallow specific nonfood expenses as itemized deductions from income. Moreover, the Secretary's regulations, which provide for but a few itemized deductions,[16] are all the more reasonable when viewed in light of the Secre-

[16] See 7 C.F.R. 271.3(c)(1)(iii). Under the Secretary's regulations, ordinary living expenses are not generally deductible. Deductions are allowed, however, for the amount by which shelter costs exceed 30 percent of gross income (7 C.F.R. 271.3(c)(1)(iii)(*h*)), and for "[u]nusual expenses incurred due to an individual household's disaster or casualty losses which could not be reasonably anticipated by the household." 7 C.F.R. 271.3(c)(1)(iii)(*e*). See also note 3, *supra*.

tary's finding that deductions tend to benefit households with higher incomes (*Resolution 58 Report, supra,* at 26):

> Allowing participants to deduct certain expenditures in unlimited amounts results in higher income households, who have more money to spend for deductible items, receiving disproportionately large bonuses in comparison with lower income households who cannot afford large deductible expenditures. It is these itemized deductions that allow households with adequate incomes to become eligible since their net income after deductions may be considerably less than their actual gross income.

Disallowance of deductions for nonfood expenses thus helps to avoid what otherwise might be an allocation of assistance to higher-income households, possibly at the cost of reducing the amount of relief otherwise available to poorer households.

b. Although the Secretary allows a standard, nonitemized deduction for incidental expenses under some circumstances (see 7 C.F.R. 271.3(c)(1)(iii)(*a*)), he has determined to disallow an itemized deduction for commutation expenses, whether incurred by a trainee or by one who commutes to work. The disallowance of commutation expenses as an itemized deduction is of course supported by the considerations underlying the disallowance of nonfood expenses generally.

Commutation expenses could reasonably be anticipated to vary widely among households, depending on factors, such as personal consumption choices, that should not affect the amount of federal food stamp

assistance that the household is eligible to receive. The amount of commutation expenses actually incurred by an individual depends on the method of transportation utilized and the distance traveled. Both of these factors are to a large extent matters of personal choice. For example, one individual may choose to travel in his own private automobile, while another may choose instead less expensive forms of commutation, such as by carpool or public transportation. Similarly, one individual, like appellee Hein (Mot. to Aff. 2), may live far from work or school, and therefore require a larger expenditure for traveling than another who lives closer. The Secretary's regulation disallowing an itemized deduction properly avoids having a household's eligibility for food stamp assistance turn upon such factors.

Instead, the Secretary has determined to allow a standard, nonitemized deduction from income received in connection with work and training. 7 C.F.R. 271.3(c)(1)(iii)(*a*). This standardized deduction gives some recognition to the fact that work or school may entail additional nonfood expenses, and thereby gives encouragement to employment and training, without allowing personal consumption choices to govern the allocation of food stamp benefits.

The rationale for the Secretary's decision to disallow an itemized deduction for commutation expenses, and to permit only a standard deduction, applies equally to individuals who, like appellee Hein, receive an allowance that may be used to defray such expenses. To allow these individuals an itemized de-

duction in excess of the standard deduction would be unfair to those trainees and wage-earners who must cover similar commutation expenses out of other sources of income.

c. Finally, the disallowance of an itemized deduction for training transportation expenses is neither arbitrary nor contrary to a congressional intention to encourage education.

It was not arbitrary for the Secretary to allow a deduction for direct educational or training expenses, *i.e.*, "[t]uition and mandatory fees assessed by educational institutions" (7 C.F.R. 271.3(c)(1)(iii)(*f*)), and at the same time to disallow an itemized deduction for commutation expenses incurred in connection with training. Cf. *Commissioner* v. *Flowers,* 326 U.S. 465 (holding that work commutation expenses, unlike business expenses, are not deductible for federal income tax purposes). Tuition and other mandatory fees generally represent fixed amounts which, unlike commutation expenses, do not vary because of the subjective preference of the student. Moreover, tuition and related fees represent substantial expenditures that have no counterpart in the budgets of the normal household. The same is not true for commutation expenses. Unlike tuition fees, which are, of course, peculiarly associated with education, commutation expenses are also incurred in the pursuit of other endeavors. Thus, it is not appropriate to allow an itemized deduction for tuition to those households incurring such expense, while affording to all households only a standard deduction to cover incidental expenses.

The disallowance of an itemized deduction for incidental expenses is not contrary to a congressional intention to encourage education. In the first place, there is no evidence that Congress had any such intention in mind at the time the Food Stamp Act was adopted. See *Chek* v. *Butz,* No. C–75–0559-CBR, decided June 4, 1975 (N.D. Cal.); *Stewart* v. *Butz,* 356 F. Supp. 1345 (W.D. Ky.), affirmed *per curiam,* 491 F. 2d 165 (C.A. 6). The Act's purposes are to help low-income households purchase a nutritionally adequate diet and to strengthen the agricultural economy. 7 U.S.C. 2011. The provision for students in 7 U.S.C. (Supp. V) 2014(c), which the district court construed as indicative of a specific intention to grant special benefits to students as a class (402 F. Supp. at 405; J.S. App. A, p. 15a), is merely an exemption from the general requirement that able-bodied adults register for work as a prerequisite to eligibility for food stamps. The proviso does not encourage individuals to attend school rather than work; the Act is neutral as between employment and education.

To the extent, however, that the Act's exemption of students from the registration requirement evidences Congress' intention not to discourage education and training, the deduction for tuition and fees, together with the statutory exemption itself, is more than sufficient to carry out that purpose. The Secretary could reasonably anticipate that, to the extent they were incurred at all, commutation expenses would ordinarily be a relatively insignificant part of the total cost of education, and he correctly determined that

the Act does not require the allowance to students of a special itemized deduction for such expenses."[17]

B. THE SECRETARY'S REGULATIONS DO NOT DENY EQUAL PROTECTION OR DUE PROCESS

For reasons which are explicit or implicit in what already has been said, the regulatory provisions at issue here are plainly constitutional.

1. The Secretary's regulations do not violate the principles of equal protection that inhere in the Due Process Clause of the Fifth Amendment. Inclusion of training allowances in income, and disallowance of an itemized deduction for commutation expenses, provides a reasonable and economically sound standard for allocating food stamp benefits. Such regulations thus satisfy constitutional as well as statutory requirements. See *Weinberger* v. *Salfi*, 422 U.S. 749; *Jefferson* v. *Hackney*, 406 U.S. 535; *Dandridge* v. *Williams*, 397 U.S. 471.

In holding to the contrary, the district court reasoned that the regulations drew "an arbitrary distinction between those food stamp recipients who receive such travel allowances and those who do not, "even though both classes are similarly situated in

[17] The disallowance of an itemized deduction for training transportation expenses here is not contrary to *Shea* v. *Vialpando*, 416 U.S. 251. In that case, Section 402(a)(7) of the Social Security Act, 42 U.S.C. 602(a)(7), specifically required that "any expenses reasonably attributable to the earning of * * * income" be taken into consideration in administering aid to families with dependent children; the Court concluded that that statute barred the use of standardized deductions for such expenditures. The Food Stamp Act contains no comparable requirement.

terms of disposable income and purchasing power" (402 F. Supp. at 405–406; J.S. App. A, p. 16a). But in concluding that individuals who receive training allowances have the same disposable income as those who do not, the court erroneously assumed that those who receive allowances always spend the entire allowance to defray training expenses, and that those who do not receive allowances do not incur such expenses. As we have explained (pages 14–15, *supra*), the training allowance need not be used entirely for travel or other incidental training expenses. Moreover, many individuals who do not receive such an allowance nevertheless incur travel or other incidental expenses, whether for a training program or for work, that must be defrayed from other sources of income. Thus the basic factual predicate upon which the district court's constitutional holding rested was unsound: those "who receive * * * travel allowances and those who do not" cannot be assumed to be "similarly situated in terms of disposable income * * *."

Because the district court failed to consider that class of individuals who do not receive a training allowance but do incur incidental training or other similar expenses, the court devised a solution that does not conform as closely to the ideal of equal treatment as do the Secretary's regulations. The regulations requiring training allowances to be included in income, and disallowing an itemized deduction for training expenses, reflect the real difference in need levels between households whose training expenses are de-

frayed by such allowances and those whose training expenses are not so defrayed. The former households are better off, by the amount of their allowances, and the Secretary's regulations realistically take account of this fact. The district court's order, on the other hand, ignores the real difference in economic well-being between such households. That order, by requiring the Secretary to permit those households that receive the allowance to exclude it from their income,[18] irrationally favors households that receive an allowance over those that do not.

Different but equally serious problems of equity would attend the district court's holding even if it could be read broadly as requiring the Secretary to allow an itemized deduction for training transportation expenses without regard to whether such expenses are defrayed by an allowance. All other things being equal, allowance of such a deduction might achieve equity between households that incur incidental training expenses. But the allowance of an itemized deduction only for training transportation expenses would unduly favor such households over other households that incur similar commutation expenses, but in connection with work rather than training. That disparity of treatment would have no apparent justification under the Food Stamp Act, and it is not required by principles of equal protection.

[18] Technically, the Secretary is given a choice between excluding the allowance and allowing a completely offsetting deduction (J.S. App. B, p. 25a):
"[The Secretary is] permanently enjoined from including in the monthly net income of any person receiving same, any amount received by such person as reimbursement for necessary commuting expenses, pursuant to an Individual Education and Training Plan, unless such amount is deducted from such person's net monthly income in determining such person's adjusted gross income."

Nor should the Secretary be required to allow an all households insofar as the treatment of that narrow itemized deduction for all commutation expenses, merely in order to achieve maximum parity between class of expenses is concerned. Such a deduction would favor households that allocate—in many cases by choice rather than by necessity (see page 29, *supra*)—a relatively high proportion of their non-food expenditures to commutation, over those that incur lesser or no commutation expenses. That result is not required by the Food Stamp Act and would not conduce to greater fairness, equality of treatment, or rationality in the allocation of benefits.

Perfect equality of treatment is elusive and almost certainly unobtainable. The district court's insistence upon the primacy of "food purchasing power," taken to its logical extreme, would require the allowance of an itemized deduction for all expenditures for non-food items. But the Secretary has properly rejected that approach as contrary to the clear intent and understanding of Congress (see pages 15–17, 26–28, *supra*), and the principles of equal protection do not require otherwise. Food stamps benefits, like many other forms of public assistance, are appropriately and constitutionally allocated on the basis of the in-

dividual's or household's "income." [19] Thus, any definition of "income" otherwise sustainable as reasonable under the Food Stamp Act affords a sufficiently rational basis for the allocation of benefits to satisfy the requirements of equal protection. We have shown above (pages 17–32, *supra*) that the Secretary's regulations defining "income" are reasonable. By applying these regulations evenly to all households, the Secretary is able fairly and with reasonable accuracy to determine the comparative need of each household for food stamp assistance. This result satisfies the requirements of equal protection.

2. The Secretary's regulations do not deny due process by establishing an irrebuttable presumption. The district court's holding to the contrary is based upon the fact that those regulations "provide no safeguards

[19] For example, in addition to the food stamp program, the following benefits are allocated on the basis of, or with regard to, household or individual income: aid and services to needy families with dependent children (AFDC), Title IV of the Social Security Act, as amended, 42 U.S.C. (and Supp. IV) 601 *et seq.*; federal old-age, survivors, and disability insurance benefits, Title II of the Social Security Act, as amended, 42 U.S.C. (and Supp. IV) 401 *et seq.*;grants to states for medical assistance programs (medicaid), Title XIX of the Social Security Act, as amended, 42 U.S.C. (and Supp. IV) 1396 *et seq.*; grants to states for social services, Title XX of the Social Security Act, 42 U.S.C. (Supp. IV) 1397 *et seq.*; grants for family planning service projects, Title X of the Public Health Service Act, 84 Stat. 1506, as added and amended, 42 U.S.C. (and Supp. IV) 300a *et seq.*

This Court has never questioned the propriety of allocating such benefits on the basis of or with regard to income. Cf. *Jefferson* v. *Hackney*, *supra*; *Dandridge* v. *Williams*, *supra*; *Shea* v. *Vialpando*, *supra*; *Rosado* v. *Wyman*, 397 U.S. 397.

for individual consideration of what effect the travel allowance actually has on an individual's ability to purchase a nutritionally adequate diet" (402 F. Supp. at 407; J.S. App. A, p. 20a). In so reasoning, the court apparently again proceeded upon the belief that "income" is an inadequate measure of a household's need for food stamp assistance and that an individualized determination of "ability to purchase a nutritionally adequate diet" is constitutionally necessary. It is certainly true that two households with the same income may incur different nonfood expenses, and therefore have different amounts available for the purchase of food. But "income" is an easily administered standard that permits roughly accurate comparisons of the relative needs of large numbers of households. The social cost that would be entailed by a more precise measure of actual need—the administrative cost involved in obtaining and verifying the detailed expenses of each recipient household, and the burden imposed on the households themselves—would probably significantly outweigh the benefit of marginally enhanced accuracy in the assessment of true relative need. Thus "income" is an appropriate measure of need and, as we have shown (pages 17–32, *supra*), the Secretary's regulations provide a reasonable definition of "income."

In the circumstances of this case, the Due Process Clause requires no more. The "conclusive presumption" (402 F. Supp. at 407; J.S. App. A, p. 20a) anal-

ysis upon which the district court relied is inapplicable to statutory schemes creating "noncontractual claim[s] to receive funds from the public treasury * * *." *Weinberger* v. *Salfi, supra,* 422 U.S. at 772. Although one may hypothesize individual situations in which the calculation of "income" under the Secretary's regulations does not precisely reflect a household's relative need for food stamp assistance, there is no constitutional justification for subjecting the regulations to the standard of universal truth required of irrebuttable evidentiary presumptions. See *Weinberger* v. *Salfi, supra.* See generally Note, *The Irrebuttable Presumption Doctrine in the Supreme Court,* 87 Harv. L. Rev. 1534 (1974). Individualized determinations of "ability to purchase a nutritionally adequate diet," more subtle or refined than determinations of "income," are not constitutionally required. A statutory or regulatory classification, "though [it] may approximate, rather than precisely mirror, the results that case-by-case adjudication would show, [is] permissible under the Fifth Amendment * * *." *Mathews* v. *Lucas,* No. 75–88, decided June 29, 1976, slip op. 13–14. The statutory eligibility criterion of "income" provides a generally accurate determination of household need; the Secretary's regulations reasonably define "income." Those regulations therefore give effect to the statutorily prescribed eligibility criterion in a constitutionally permissible manner.

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

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AUGUST 1976.

APPENDIX

Food Stamp Act of 1964, 78 Stat. 703 *et seq.*, as amended, 7 U.S.C. (and Supp. V) 2011 *et seq.*:

7 U.S.C. 2011 provides:

> It is hereby declared to be the policy of Congress, in order to promote the general welfare, that the Nation's abundance of food should be utilized cooperatively by the States, the Federal Government, local governmental units, and other agencies to safeguard the health and well-being of the Nation's population and raise levels of nutrition among low-income households. The Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. The Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of our agricultural abundances and will strengthen our agricultural economy, as well as result in more orderly marketing and distributing of food. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to purchase a nutritionally adequate diet through normal channels of trade.

7 U.S.C. 2013 provides in pertinent part:

> (a) The Secretary is authorized to formulate and administer a food stamp program under which, at the request of the State agency, eligible households within the State shall be provided with an opportunity to obtain a nutritionally adequate diet through the issuance to them of a coupon allotment which shall have a

greater monetary value than the charge to be paid for such allotment by eligible households. The coupons so received by such households shall be used only to purchase food from retail food stores which have been approved for participation in the food stamp program. Coupons issued and used as provided in this chapter shall be redeemable at face value by the Secretary through the facilities of the Treasury of the United States.

* * * * *

(c) The Secretary shall issue such regulations, not inconsistent with this chapter, as he deems necessary or appropriate for the effective and efficient administration of the food stamp program.

7 U.S.C. (Supp. V) 2014 provides in pertinent part:

(b) The Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall establish uniform national standards of eligibility for participation by households in the food stamp program and no plan of operation submitted by a State agency shall be approved unless the standards of eligibility meet those established by the Secretary. The standards established by the Secretary, at a minimum, shall prescribe the amounts of household income and other financial resources, including both liquid and nonliquid assets, to be used as criteria of eligibility * * *.

(c) Notwithstanding any other provisions of law, the Secretary shall include in the uniform national standards of eligibility to be prescribed under subsection (b) of this section a provision that each State agency shall provide that a household shall not be eligible for assistance under this chapter if it includes an able-bodied adult person between the ages of eighteen and sixty-five (except mothers or other members of the household who have the responsibility of care of dependent children or of incapacitated adults, bona fide students in any accredited school or training program, or persons employed and working at least 30 hours per week) who either (a) fails to register for employment at a State or Federal employment office or, when impractical, at such other appropriate State or Federal office designated by the Secretary, or (b) has refused to accept employment or public work * * *.

7 U.S.C. (and Supp. V) 2016 provides in pertinent part:

(a) The face value of the coupon allotment which State agencies shall be authorized to issue to any households certified as eligible to participate in the food stamp program shall be in such amount as the Secretary determines to be the cost of a nutritionally adequate diet, adjusted semiannually by the nearest dollar increment that is a multiple of two to reflect changes in the prices of food published by the Bureau of Labor Statistics in the Department of Labor to be implemented commencing with the allotments of January 1, 1974, incorporating the changes in the prices of food through August 31, 1973, but in no event shall such adjustments be made for households of a given size unless the increase in the face value of the coupon allotment for such households, as calculated above, is a minimum of $2.00.

(b) Notwithstanding any other provision of law, households shall be charged for the coupon allotment issued to them, and the amount of such charge shall represent a reasonable investment on the part of the household, but in no event more than 30 per centum of the household's income: *Provided,* That coupon allotments may be issued without charge to households with income of less than $30 per month for a family of four under standards of eligibility prescribed by the Secretary: *Provided*

further, That the Secretary shall provide a reasonable opportunity for any eligible household to elect to be issued a coupon allotment having a face value which is less than the face value of the coupon allotment authorized to be issued to them under subsection (a) of this section. The charge to be paid by eligible households electing to exercise the option set forth in this subsection shall be an amount which bears the same ratio to the amount which would have been charged under subsection (b) of this section as the face value of the coupon allotment actually issued to them bears to the face value of the coupon allotment that would have been issued to them under subsection (a) of this section.

Regulations of the Department of Agriculture on the Food Stamp Program:

7 C.F.R. 271.3 provides in pertinent part:

(c) *Income and resource eligibility standards of other households.* Each State agency shall apply the uniform national income and resource standards of eligibility established by the Secretary to determine the eligibility of all other applicant households, including those in which some members are recipients of federally aided public assistance or general assistance.

(1) *Definition of income.* (i) Monthly income means all income which is received or anticipated to be received during the month. To compute maximum monthly income for purposes of determining eligibility, income shall mean any of the following but is not limited to:

(*a*) All compensation for services performed as an employee;

(*b*) Net income from self-employment, which shall be the total gross income from such enterprise (including the total gain received from the sale of any capital goods or equipment related to such enterprise), less the cost of producing that income. The following shall not be considered as the cost of producing income:

(*1*) Payments on the principal of the purchase cost of income-producing real estate. Any payments of principal, interest, and taxes on the home shall be subject to paragraph (c)(1)(iii)(*h*) of this section;

(*2*) Payments on the principal of the purchase cost of capital assets, equipment, machinery, and other goods;

(*3*) Depreciation; and

(*4*) A net loss sustained in any previous period;

(*c*) The total amount of a roomer's payment to the household;

(*d*) The total payment received from each boarder less a deduction for each boarder of the value of the monthly coupon allotment for a one-person household;

(*e*) Payments received as an annuity; pension; retirement or disability benefit; veterans', workmen's or unemployment compensation; and old-age, survivors, or strike benefit;

(*f*) Payments received from federally aided public assistance programs, general assistance programs, or other assistance programs based on need;

(*g*) Payments received from Government-sponsored programs such as Agricultural Stabilization and Conservation Service programs, the Work Incentive Program, or Manpower Training Program;

(*h*) Payments, except those for medical costs, made on behalf of the household by a person other than a member of the household;

(*i*) Cash gifts or awards (except as provided in paragraph (c)(1)(ii)(*e*) of this section) for support, maintenance, or the expenses of education.

(*j*) Scholarships, educational grants (including loans on which repayment is deferred until

completion of the recipient's education), fellowships, and veteran's educational benefits;

(*k*) Support and alimony payments;

(*l*) Rents, dividends, interest, royalties, and all other payments from any source whatever which may be construed to be a gain or benefit; and

(*m*) The actual value of housing received from an employer by members of a household as income in kind, in lieu of or supplemental to household income, not to exceed $25 per month. No value is to be assigned to housing received as payment in kind which has been condemned or declared substandard under Federal, State, or local housing codes.

(ii) The following shall not be considered income to the household (this list is inclusive and no other exclusions from income shall be allowed):

(*a*) Income received as compensation for services performed as an employee or income from self-employment by a child residing with the household who is a student and who has not attained his eighteenth birthday.

(*b*) Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(*c*) Any gain or benefit which is not in money (except as provided in paragraph (c)(1)(i)(*m*) of this section);

(*d*) That income of a household in a quarter which is received too infrequently or irregularly to be reasonably anticipated: *Provided,* That such infrequent or irregular income of all household members does not exceed $30 in the quarter;

(*e*) Monies received from insurance settlements, sale of property (except for property related to self-employment provided for in subdivision (c)(1)(i)(b) of this section), cash prizes, awards, and gifts, inheritances, retroactive lump-sum Social Security or Railroad Retirement pension payments, income tax refunds and similar nonrecurring lump-sum payments;

(*f*) All loans, except loans on which repayment is deferred until completion of the recipient's education;

(*g*) Income received by volunteers for services performed in the National Older Americans Volunteer Program as stipulated in the 1973 amendments to the Older Americans Act of 1965, Public Law 93–29 (87 Stat. 30); and

(*h*) Payments received under the WIC (Women, Infants and Children) Program.

(iii) Deductions for the following household expenses shall be made (this list is inclusive and no other deductions from income shall be allowed):

(*a*) Ten per centum of income from compensation for services performed as an employee or training allowance not to exceed $30 per household per month. This deduction shall be made before the following deductions.

(*b*) Mandatory deductions from earned income which are not elective at the option of the employee such as local, State, and Federal income taxes, Social Security taxes under FICA, and union dues;

(*c*) Payments for medical expenses, exclusive of special diets, when the costs exceed $10 per month per household;

(*d*) The payments necessary for the care of a child or other persons when necessary for a household member to accept or continue employment, or training or education which is preparatory for employment;

(*e*) Unusual expenses incurred due to an individual household's disaster or casualty losses which could not be reasonably anticipated by the household;

(*f*) Tuition and mandatory fees assessed by educational institutions (no deductions shall be made for any other education expenses such as, but not limited to, the expense of books, school supplies, meals at school, and transportation);

(*g*) Court-ordered support and alimony payments; and

(*h*) Shelter costs in excess of 30 per centum of the household's income after the above deductions. The State agency may develop, subject to FNS approval, standard utility allowances for use in calculating shelter costs: *Provided,* That the State agency must use actual utility costs if the household so requests and can verify such costs; and *Provided further,* That the State agrees to make annual reviews and adjust the standard, as necessary, to reflect deviations revealed by quality control, State agency surveys of utility company rates, or any other methods developed by the State and approved by FNS.

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FOR ARGUMENT

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 75-1261
75-1355

SECRETARY OF AGRICULTURE,

Appellant,

v.

KAREN HEIN, *et al.*,

Appellees.

KEVIN J. BURNS, *etc.*, *et al.*,

Appellants,

v.

KAREN HEIN, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

BRIEF FOR THE APPELLEES

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BRIEF FOR THE APPELLEES

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Food Stamp Act of 1964, as amended, 7 U.S.C. §§2011, *et seq.*, the Social Security Act of 1935, as amended, 42 U.S.C. §§301, *et seq.*, and state and federal regulations promulgated thereunder, insofar as they are not included in the Jurisdictional Statements and Briefs filed by the Appellants in No. 75-1261 and No. 75-1355, are set forth in Appendix A, *infra*, pp. 1a-13a

QUESTIONS PRESENTED

1. Do the Appellant's regulations, which substantially reduce Federal Food Stamp assistance to a household solely on the basis of a household member's receipt of a government allowance for necessary commuting in connection with participation in a government sponsored training program, violate the Food Stamp Act and other federal statutes?

2. Do the same regulations violate the Equal Protection and Due Process guarantees of the Fifth and Fourteenth Amendments to the United States Constitution?

3. Does the District Court's Order violate the Eleventh Amendment because one of its ancillary effects may be that the State will incur certain administrative costs, when the State is required by federal statute to bear such costs?

STATEMENT OF THE CASE

Although some aspects of the Appellants'[1] respective statements of the case are accurate, others are confusing and misleading. The following paragraphs will first outline the factual and procedural background of the case, and then will address one respect in which the Appellants' briefing has obfuscated the nature of the controversy and of the District Court's decision.

In October of 1968, Appellee Karen Hein was divorced and was awarded custody of her two minor children; at that time, she became eligible for public assistance, including Aid to Families with Dependent Children (AFDC)[2] and Food Stamps.[3] *Hein v. Burns*, 402 F.Supp. 398, 401 (S.D. Iowa 1975), Butz J.S., p. 4a; Jt. App. 23. Each month, Appellee Hein received an AFDC grant of $220, and she was permitted to purchase $94 worth of Food Stamp coupons for $46, Jt. App. 23;[4] in addition, Appellee Hein received $28.75 per month in rental income.[5] In September of 1972, the Muscatine, Iowa, Department of Social Services approved Appellee Hein for an "Individual Education and Training Plan" under which she would receive training at the St. Luke's School of Nursing in

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[1] This brief is being filed jointly in both *Butz v. Hein*, No. 75-1261, and *Burns v. Hein*, No. 75-1355. As used herein, the term "Appellants" will refer to the Appellants in both No. 75-1261 and No. 75-1355.

[2] *See* 42 U.S.C. §601, *et seq.* (1974).

[3] *See* 7 U.S.C. §2011, *et seq.* (1974).

[4] The general operation of the Food Stamp program is adequately described in the Brief for the Appellant in No. 75-1261 (hereinafter "Butz Brief"), pp. 3-4.

[5] Under present regulations, a three-person household would receive a monthly AFDC grant of $294, Iowa Department of Social Services *Employees' Manual* V-App-14 (App. A, p. 8a, *infra*), and would be permitted to purchase $130 worth of Food Stamp coupons for $82, 7 C.F.R. 271.10, App. A.

Davenport, Iowa, which was the closest facility to Muscatine, Iowa, Appellee Hein's place of residence, that provided such training.[6] 402 F.Supp. at 401, Butz J.S., p. 4a; Jt. App. 24. As part of her Individual Education and Training Plan, Ms. Hein was granted an allowance of $44.00 per month[7] for necessary commuting expenses thereunder. At all times material to this action, Ms. Hein was commuted to Davenport to attend classes at St. Luke's. *Ibid.*

Solely because of Appellee Hein's receipt of the above-described grant for necessary commuting expenses under her Individual Education and Training Plan, the State Appellants,[8] consistently with state and federal regulations governing the Food Stamp program, added $44.00 per month to Ms. Hein's "income" for purposes of calculating the price which she would have to pay in order to purchase for herself and her children the monthly allotment of food stamps for a family of three. At the same time, the State Appellants did not deduct from "income" the amount of the grant or the additional commuting expenses that were necessitated by Appellee Hein's participation in the Individual Education and Training Plan.[9] The end result was that

[6] The distance between Muscatine and Davenport is approximately 25 miles.

[7] At this time, a recipient engaged in a part-time Individual Education and Training Plan would receive a monthly "training related expense allowance" at the rate of 15¢ per mile for the number of miles between her home, child care facility, and the site of the training facility, while a participant in a full-time Plan would be entitled to a training related expense allowance of $60. Iowa Admin. Code 770-55.4(249C) (State Appellants' Brief, p. 6a); Iowa Dept. of Soc. Services *Employees' Manual* XIII-8-5 (Appendix A, p. 9a, *infra*).

[8] The term "State Appellants" will refer to the Appellants in No. 75-1355, Kevin J. Burns (Commissioner of the Department of Social Services of the State of Iowa) and Elizabeth Masterson (Director of the Muscatine, Iowa, Department of Social Services.).

[9] Deductions are given for such educational expenses as tuition, fees, and child care. 7 C.F.R. 271.3(c)(1)(iii)(*d*), (*f*).

Ms. Hein was required to pay $58.00 per month for $94.00 worth of Food Stamp coupons, rather than the $46.00 per month she was required to pay for the same amount of Food Stamps before she was approved for her Individual Education and Training Plan and received her allowance for necessary educational commuting expenses. 402 F.Supp. at 405, Butz J.S., p. 14a; Jt. App. 24. In short, solely on the basis of her receipt of a state-approved educational expense allowance which was *necessary* for additional travel in connection with her participation in a government-sponsored Individual Education and Training Plan, and none of which was available for family food purchases, Appellee Hein's Food Stamp benefits, and hence her ability to purchase an adequate diet for herself and her two children, were reduced by at least $12.00 per month. [In fact, the amount of the deprivation was more than $12 per month. Since Ms. Hein did not actually have any additional income that was available to pay the additional $12 for $94 worth of stamps, she was forced to buy less than her allotted food stamp coupons. Jt. App. 26. Under the schedules then in effect, the next higher allotment Ms. Hein could have purchased (for $43.50) was $71.00 worth of food stamp coupons. (Plaintiff's Exhibit #2, p. 3, Hearing on Jan. 24, 1974, App. B, p. 4b, *infra*). Since the resulting food stamp bonus would have been $27.50, rather than the $48.00 bonus Appellee received before receiving her educational travel grant, her effective food purchasing ability would then have been $20.50 less than before she received the grant for necessary commuting expenses.]

After exhausting administrative remedies, Appellee Hein brought this action on her own behalf and, pursuant to Rule 23, Fed.R.Civ.Pro., on behalf of all other persons similarly situated, challenging on statutory and constitutional grounds the validity of the state

regulations under which her family's Food Stamp benefits had been reduced. On March 4, 1974, the District Court, sitting as a three-judge court pursuant to 28 U.S.C. §§2281 and 2284, unanimously granted Appellee and the class she represented injunctive relief on the ground that the policies she had challenged were inconsistent with the Federal Food Stamp Act. *Hein v. Burns,* 371 F.Supp. 1091 (S.D.Ia. 1974), Jt. App. 31. On appeal to this Court, that judgment was vacated and remanded for reconsideration in light of intervening amendments to the federal Food Stamp regulations, specifically 7 C.F.R. 271.3(c)(1)(iii)(*e*) (which, in the process of amendment, was renumbered 7 C.F.R. 271.3(c)(1)(iii)(*f*)). 419 U.S. 989 (1974), Jt. App. 43.

On remand, Appellee Hein joined as a defendant in the action Secretary of Agriculture Butz.[10] The three-judge District Court again unanimously held that the challenged State and Federal policies were invalid, this time on both statutory and constitutional grounds. The District Court ordered that the defendants be

> permanently enjoined from including in the monthly net income of any person receiving same, any amount received by such person as reimbursement for necessary commuting expenses, pursuant to an Individual Education and Training Plan, unless such amount is deducted from such person's net monthly income in determining such person's adjusted net income.

402 F.Supp. at 408, Butz J.S., pp. 24a-25a. In addition, the District Court ordered that the future prices of Food Stamps for members of the plaintiff class who were then participating in the Food Stamp program be reduced in sufficient amount and for sufficient time to

[10]Appellant in No. 75-1261, hereinafter referred to individually as "the Secretary."

compensate those recipients for Food Stamp benefits wrongfully denied in the past. All Appellants have appealed from the first order; the State Appellants also have appealed from the second order on Eleventh Amendment grounds.

As will be noted in subsequent portions of this brief, many of the arguments made in this Court by the Appellants are based on mischaracterizations both of the issues in this case and of the decision by the District Court. At this point, Appellee will discuss one such mischaracterization which pervades much of the briefing by the Appellants.

Throughout their briefs, the Appellants assert that the $44-per-month allowance that caused Appellee Hein's food stamp assistance to be reduced was freely divertable by Appellee Hein to non-travel, non-educational expenses such as food. This assertion is based on the further assertion by the State Appellants—never made in any of the District Court proceedings—that Appellee Hein's allowance was received under selected portions of Page XIII-8-5 of the Iowa Department of Social Services Manual *Employees' Manual*[11] and Section 58.4(249C) of the 1973 Iowa Department Rules[12] which provided, at the time this case was originally submitted, that "[c]lients enrolled in a full-time training program shall be entitled to a full monthly TRE ['training related expense allowance'] of $44.00." For a number of reasons, however, the Appellants' characterization of the allowances involved in this case is improper.

First, it was *stipulated* in the District Court that the $44.00 monthly allowance received by Appellee Hein was for commuting that was *necessary* to her

[11]*See* App. A, p. 11a, *infra.* This Page was incorrectly numbered XIII-8-4 in the State Appellants' Jurisdictional Statement, p. 6a.

[12]*See* State Appellants' Brief, p. 6a.

participation in her Individual Education and Training Plan, and that she was in fact doing that necessary commuting. Jt. App. 24, ¶¶6, 12; *see also,* Jt. App. 29, ¶2. On the basis of these stipulations and the other evidence before it,[13] the District Court properly found that Appellee Hein's allowance was designed and used for transportation that was *necessary* to her government-approved education and training, and was not available for family food purchases.[14] 402 F.Supp. at 401, 405, Butz J.S., pp. 4a-5a, 13a-15a; 371 F.Supp. at 1092-94, Jt. App. 32-35. These findings were never disputed by any of the Appellants in the District Court, despite ample opportunity to do so by means of motions for new trial after the District Court's orders of March 4, 1974, and October 10, 1975, or by presenting evidence following this Court's vacation and remand of the first District Court decision. Indeed, both the State Appellants and the Secretary consistently referred to the allowance in terms similar to the District Court's in their briefing below.[15] In short, however one might have interpreted the "full-time" trainee provisions of *Employees' Manual* XIII-8-5, Appellee Hein's $44-per-month allowance was for

[13]The other evidence included Affidavits, uncontroverted by the Appellants in their resistances to Appellees' Motion for Summary Judgment on Remand, which stated, *inter alia,* that the $44.00 allowance was "reimbursement for necessary commuting" under Appellee's Individual Education and Training Plan. *See, e.g.,* Affidavit filed Oct. 19, 1973, App. B, p. 1b-2b, *infra,* ¶¶5, 8.

[14]Quite apart from the stipulation, this would have been the only sensible conclusion in light of the distance between Muscatine and Davenport.

[15]*See, e.g.,* State Defendants' Memorandum Brief in Support of Motion to Dismiss and Motion for Summary Judgment, filed Jan. 23, 1974, at 1 ("the maximum allowable flat grant of $44 for transportation in connection with her training"); Federal Defendant's Motion for Summary Judgment, filed April 1, 1975, at 2 ("transportation allowance received to defray travel costs incurred in connection with training at a hospital some distance from her home").

necessary transportation under her Individual Education and Training Plan.[16]

Second, the District Court's orders of March 4, 1974, and October 10, 1975, applied not only to Appellee Hein, but also to a class of persons defined narrowly as those who received allowances *for necessary commuting expenses,* pursuant to an Individual Education and Training Plan. 402 F.Supp. at 408, Butz J.S., p. 25a. None of the Appellants complained of this definition of the represented class at any time during this litigation. And quite apart from the stipulation of facts referred to above, it is clear that there were persons in the class as defined by the District Court, at least by virtue of the portion of the state regulations governing Individual Education and Training plan allowances not quoted by the Appellants in the bodies of their briefs. At the time of submission to the District Court, Page XIII-8-5 of the Iowa Department of Social Services *Employees' Manual* provided in pertinent part as follows:

> Individual Education and Training Plan clients attending institutional training facilities are entitled to a training related expense allowance. *Clients involved in part-time training plans receive 10¢/mile for those miles traveled between home, child care facility and training facility.* The total monthly allowance however cannot exceed $44.00. Clients enrolled in full-time training programs are entitled to a full monthly TRE of $44.00

See App. A, p. 11a, *infra.* Thus, persons engaged in "part-time training plans" were within the class defined by the District Court; and there can be no argument that their "training related expense allowances" were

[16]No evidence was introduced in the District Court as to whether Appellee Hein herself was participating in a full-time Plan.

for anything but necessary travel under Individual Education and Training Plans.[17]

As indicated above, the District Court's Order of October 10, 1975, by its terms was carefully restricted to allowances received for necessary commuting under Individual Education and Training Plans—i.e., allowances that could not be diverted to other expenses such as food. It is that Order, and not some imaginary broader order, from which the Appellants have appealed, and there is simply no reason for this Court to consider any broader issues that might be raised by such an order. For these reasons, most of the remainder of this brief will deal with this case as it was presented to and decided by the District Court. However, since the Appellants have devoted so much of their attention to the broader hypothetical decision that they apparently would have this Court review, Part III of the Appellee Hein's Argument (pp. 35-40, *infra*) will show that even under the Appellants' characterization of the training-related allowances received by the plaintiff class, the Appellants' policies would be statutorily and constitutionally invalid.

SUMMARY OF ARGUMENT

1. Under the District Court's appropriately narrow decision, the monthly allowances received by members of the plaintiff class were reimbursement for necessary travel in connection with their participation in Individual Education and Training Plans, and did not increase their ability to purchase food for their families.

[17]With regard to persons involved in part-time Individual Education and Training plans, the present version of Item XIII-8-5 is identical to the one quoted above, except that the payment is now 15¢/mile, with a maximum of $45 per month. *See* App. A, p. 9a, *infra*.

However, the policy of the Appellants that is challenged in this action *reduced* Food Stamp assistance solely on the basis of such allowances, and was therefore contrary to the primary purpose of the Food Stamp Act—which is to *increase* the food purchasing power of low-income households to enable them to obtain a nutritionally adequate diet.

2. The Food Stamp Act also expresses a Congressional intent that participation by members of eligible households in education and training programs should not be discouraged through denial of Food Stamp benefits. Moreover, the provisions of Title XX of the Social Security Act under which Individual Education and Training Plans are authorized and funded are designed specifically to encourage public assistance recipients to obtain education and training toward self-sufficiency. The Appellants' reduction of Food Stamp benefits on the basis of an allowance for travel that is necessary to participation in an Individual Education and Training Plan *dis*courages such participation, and thus violates the Food Stamp Act and work at cross-purposes with Title XX.

3. The Food Stamp Act does not require that all "public assistance income" of whatever kind be included in the "income" figure that determines Food Stamp purchase prices. Under the Food Stamp Act, this "income" figure must relate to food purchasing power; since the government allowances for necessary travel in connection with Individual Education and Training Plans that are involved in this case are not available for food purchases and therefore do not increase food purchasing power, they are not properly included in Food Stamp "income."

4. The Appellants' reduction of Food Stamp assistance to members of the plaintiff class cannot be justified by the fact that the District Court's decision

may result in members of the plaintiff class being better off than persons who are incurring similar education-related travel expenses, but who are not receiving government reimbursement therefor. Quite apart from whether such persons actually exist, any "discrimination" that may result is attributable solely to their lack of government *educational* assistance, and not to differences in Food Stamp assistance. Moreover, to remove this "discrimination" in favor of recipients of government allowances for necessary educational travel by reducing their Food Stamp benefits is to vitiate the incentives toward education and training that the allowances are specifically designed to create—in violation of the Food Stamp Act's own preference for education and training and the intent of Congress in providing for such grants under Title XX.

5. The statutory and constitutional problems inherent in the policies challenged in this case are not cured by federal and state regulations permitting the deduction from Food Stamp "income" of 10% of a training allowance, primarily because this deduction still leaves all but an insignificant fraction of an allowance for necessary educational travel included in Food Stamp "income." Moreover, the use of a standardized 10% deduction cannot be justified in this case by the invocation of "administrative convenience," since the only allowances that are covered by the District Court's carefully tailored order are reimbursement for *necessary* travel under Individual Education and Training Plans.

6. Although only the statutory issues need be reached in this case, the Appellants' Food Stamp "income" policies are also violative of Equal Protection and Due Process as applied to the allowances for necessary educational travel involved herein. First, the Appellants' policies discriminate against those who are receiving allowances for necessary travel under Individual Education and Training Plans, in favor of those who

are not participating in such Plans and therefore are not receiving such allowances; while both groups have the same food purchasing power, the latter receive higher Food Stamp benefits. Moreover, the Appellants' regulations irrationally distinguish between educational travel expenses and educational child care expenses in determining Food Stamp purchase prices.

7. The policies challenged in this case also create a conclusive presumption that an allowance for necessary travel in connection with an Individual Education and Training Plan increases food purchasing power, without any opportunity for the recipient to show that this presumption is not true. Especially since this presumption is essentially always false with regard to the allowances covered by the District Court's Order, it is a violation of Due Process.

8. While the government educational allowances involved in this case were specifically for necessary travel in connection with Individual Education and Training Plans, the Appellants' Food Stamp "income" policies would be invalid even as applied to the hypothetically general "training related expense allowances" to which the Appellants devote much of their briefing. The only rational basis for giving such a general allowance of, e.g., $50 to a participant in an Individual Education and Training Plan is an administrative judgment that he or she generally *will* have to incur additional expenses of that magnitude in order to continue participating in that Plan. But the Appellants' Food Stamp "income" regulations presume precisely the opposite, i.e., that the Plan participant will have essentially no such additional expense attributable to education. The result is that in all but the most extraordinary cases, application of the Appellants' Food Stamp regulations would reduce the recipient's food purchasing power in violation of the Food Stamp Act's

primary purpose. At the same time, such a reduction would provide disincentives to participation in Individual Education and Training Plans, which would be contrary to the very purpose of granting the allowances under Title XX. In any event, contrary to the apparent assertion of the Appellants, these issues relative to general "training related expense allowances" are not presented by this case.

9. Finally, the Eleventh Amendment problem raised by the State Appellants is totally nonmeritorious. At most, the District Court's Order will result in the State's incurring administrative costs that are purely ancillary to a valid judicial decree. This kind of cost, which results from essentially any prospective judicial relief granted to a public assistance recipient, does not amount to damages against the State, and is the very kind of cost which a State agrees to bear under the terms of the Food Stamp Act.

ARGUMENT

I.

THE APPELLANTS' POLICY OF REDUCING FOOD STAMP BENEFITS SOLELY ON THE BASIS OF A GOVERNMENT ALLOWANCE FOR NECESSARY TRAVEL IN CONNECTION WITH A GOVERNMENT SPONSORED TRAINING PLAN VIOLATES THE FEDERAL FOOD STAMP ACT AND WORKS AT CROSS-PURPOSES WITH THE SOCIAL SECURITY ACT.

A. The Appellants' Policies Effectively Reduce The Food Purchasing Power Of Recipients Participating In Individual Education And Training Plans.

The District Court in this case held that the Appellants' reduction of Appellee Hein's family's Food Stamp benefits solely on the basis that she was receiving a government allowance for necessary travel expenses in connection with her participation in a government sponsored "Individual Education and Training Plan" violated the Food Stamp Act of 1964, 7 U.S.C. §§2011, *et seq.* (1974). 402 F.Supp. at 404-405, Butz J.S., pp. 11a-15a.[18] This holding was based in part on the District Court's conclusion that one of the central purposes of the Food Stamp Act was to enable households with low food-purchasing power to obtain a nutritionally adequate diet. 402 F.Supp. at

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[18]For similar holdings in related factual contexts, *see Turchin v. Butz*, 405 F.Supp. 1263 (D. Minn. 1976); *Harrelson v. Butz*, Civ. No. 76-0021-R (E.D. Va., June 7, 1976); *Thomas v. Butz*, Civ. No. 73-336 PHX CAM (D. Ariz., January 20, 1976). *But see Chek v. Butz*, Civ. No. 75-0559-CBR (N.D. Calif. June 4, 1975).

404-405, Butz J.S., pp. 12a-13a. That conclusion is not challenged by the Appellants, and is undisputable in light of the language and the legislative history of the Act. Section 2 of the Act, 7 U.S.C. §2011, states a Congressional finding that "the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households," and provides that a central purpose of the Act is to "raise levels of nutrition among low-income households" through a program "which will permit [such households] to purchase a nutritionally adequate diet . . . ." Moreover, 7 U.S.C. §2014(a) provides that participation in the Food Stamp Program "shall be limited to those households whose income and other resources are determined to be substantial limiting factors in permitting them to purchase a nutritionally adequate diet"; and 7 U.S.C. §2013(a) requires that the Food Stamp Program be one "under which . . . eligible households . . . shall be provided with an opportunity to obtain a nutritionally adequate diet . . . ." These provisions are especially significant in light of the 1971 amendments to the Food Stamp Act, which altered the description in §2013(a) of the ultimate benefit that was to be provided from "an opportunity *more nearly* to obtain a nutritionally adequate diet" (emphasis added) to simply "an opportunity to obtain a nutritionally adequate diet". *See* H.R. Rep. No. 91-1402, House Committee on Agriculture, 1970 Code Cong. & Adm. News 6025.[19]

[19]The clear import of these statutory provisions is fully supported by other legislative history as well. *See, e.g., id.* at 6027; Hearings on S. 6, S. 339, S. 1608, S. 1864, and S. 2014 Before the Senate Committee on Agriculture and Forestry, 91st Cong., 1st Sess., p. 389 (1969) (Testimony of Secretary Hardin); *Rodway v. U.S. Dept. of Agriculture*, 514 F.2d 809, 818-820 (D.C. Cir. 1975).

As applied to the members of the plaintiff class defined by the District Court, the state and federal regulations challenged in this action are directly contrary to the above-described purpose of the Food Stamp Act. The monthly allowances received by Appellee and the members of the class defined in the District Court's Order of October 10, 1975, were for necessary commuting in connection with their government sponsored and approved Individual Education and Training Plans, and were plainly not available to meet ordinary household needs such as food. Thus, those allowances did *not* increase their recipients' ability to purchase adequate diets for themselves and their children; in particular, Appellee Hein's household was in no less need of food stamp assistance after than before the receipt of the allowance for her necessary educational travel. The Appellants' reduction of Appellee Hein's Food Stamp benefits therefore substantially *decreased* her family's food purchasing power, and was directly contrary to the Act's central purpose to *increase* the food purchasing power of low-income households to enable them to obtain nutritionally adequate diets.[20]

B. The Appellants' Policies Penalize And Discourage Participation In Government Funded And Sponsored Education And Training Programs.

The District Court also found that the federal and state regulations challenged in this action violated a

[20]The above-described violation of the purposes of the Food Stamp Act is of course a serious one, despite the fact that the increase in the recipients' Food Stamp purchase price may be "only" $12.00. Quite apart from the fact that the actual impact of such a price increase on the ability of a household to purchase food may be considerably greater than $12, *see* Statement of the Case, *supra*, even that amount constituted a considerable portion of Appellee Hein's total Food Stamp allotment of $94 per month.

second purpose of the Food Stamp Act—the encouragement (or non-discouragement) of education and training. 402 F.Supp. at 405, Butz J.S., p. 15a. Section 5(c) of the Act, 7 U.S.C. §2014(c), provides that a household is not eligible for Food Stamp Assistance if an able-bodied member has failed to register for or accept employment, unless that household member is a caretaker of dependents or a "*bona fide student in any accredited school or training program*, or employed and working at least 30 hours per week . . . ." (Emphasis added). As the District Court concluded, this provision demonstrates that "Congress sought to encourage food stamp recipients to secure education and training," 402 F.Supp. at 405, Butz J.S., p. 15a. But the federal and state regulations challenged in this action undeniably *dis*couraged participation in state sponsored training programs by substantially reducing recipients' food stamp assistance solely on the basis of allowances for necessary educational travel that made it possible for them to participate in such programs. This was a clear violation of 7 U.S.C. §2014(c)'s indication that education and training is not to be discouraged by the denial of food stamp benefits.

It should be noted here that Congress' policy of encouraging poor persons to obtain education and training so that they may become self-sufficient is not expressed only in 7 U.S.C. §2014(c). As the Appellants themselves have indicated, the Individual Education and Training Plan under which Plaintiff has received her monthly allowance for necessary educational travel expenses has been funded in part by federal funds made available to the states under Titles IV and XX of the Social Security Act. At the time this suit was commenced, the Iowa Individual Education and Training program was funded in part with federal funds pursuant to 42 U.S.C. §602(a)(14) (now repealed),

which required all states participating in the AFDC program to develop programs to assist members of AFDC families to "attain or retain capability for the maximum self-support and personal independence." 42 U.S.C. §§602(a)(14), 606(d) (repealed, Pub.L. 93-647, §§3(a)(2), 3(a)(5), 88 Stat. 2348 (1975)). These provisions were part of a series of 1968 amendments to the Social Security Act that were intended by Congress to reduce the number of persons on AFDC "by restoring more families to employment and self-reliance." S.R. No. 744, 90th Cong., 1st Sess., 1967 U.S. Code Cong. & Adm. News 2834, 2982.

Since the commencement of this action, the essential provisions and purposes of 42 U.S.C. §602(a)(14) have been incorporated into Title XX of the Social Security Act, 42 U.S.C. §§1397, *et seq.*, and the State's Individual Education and Training program now receives federal funding under that Title.[21] The stated purpose of Title XX is to encourage each state to "furnish services directed at" five enumerated goals, one of which is "achieving or maintaining economic self-support to prevent, reduce or eliminate dependency." 42 U.S.C. §1397(1); *see also* 42 U.S.C. §1397(2). Among the types of services listed in the statute are "training and related services." 42 U.S.C. §1397a(a)(1). Each state plan must provide at least one service directed at the goal of achieving self-sufficiency, and a substantial portion of services must be directed at persons who are recipients of or eligible for benefits under Titles IV-A (AFDC), XVI (Supplemental Security Income), and XIX (Medical Assistance) of the Social Security Act. 42 U.S.C. §1397a(a)(4).

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[21]State of Iowa *Title XX Plan*, p. 28 (App. A, p. 13a, *infra*). The federal government contributes 75% of the cost of providing such services under Title XX. 42 U.S.C. §1397a(a)(1).

Thus, the Food Stamp Act's provisions evidencing Congressional intent to encourage education and training toward self-support, 7 U.S.C. §2014(c), are clearly supported by the very federal statutes under which the members of the plaintiff class receive the allowances for necessary educational commuting that are the subject of this case.[22] Plainly, the effect of the Appellants' food stamp policies is to penalize the plaintiff class for, or deter them from, participating in the very education and training programs that were funded by Congress as a necessary part of its program to encourage self-sufficiency among welfare recipients and thus to reduce the government's long range public assistance burden. In short, the Appellants' policies work at cross-purposes with Title XX of the Social Security Act, in violation of that Act and the Food Stamp Act itself, 7 U.S.C. §2014(c).

This inconsistency of the Appellants' policies with the encouragement of education and training toward self-sufficiency, and thus with the Food Stamp Act and Social Security Act, was relied upon heavily by the court in *Turchin v. Butz*, 405 F.Supp. 1263 (D. Minn. 1976), which invalidated those policies on statutory grounds. In other contexts as well, courts have recognized that separate governmental assistance programs that are designed to solve different problems or meet different needs should operate in concert with each other, rather than at cross-purposes. Thus, for example, in *Brown v. Bates*, 363 F.Supp. 897 (N.D. Ohio 1973), the court invalidated a state policy that reduced AFDC assistance solely on the basis of the

[22]Iowa's *Title XX Plan*, p. 28, states that the purpose of the Individual Education and Training Plan Program is to provide to AFDC recipients "opportunities for training or increasing job skills involving vocational classroom training, job placement, and other services to facilitate economic self-support." App. A, p. 13a, *infra*.

receipt of Work-Study benefits that were designed to facilitate education and training. *See also Elam v. Hanson*, 384 F.Supp. 549 (N.D. Ohio 1974) (invalidating reduction of AFDC assistance solely on basis of receipt of OASDI educational benefits); *Hamilton v. Butz*, 520 F.2d 709 (9th Cir. 1975) (invalidating reduction of federal Food Stamp assistance on the basis of the receipt of Federal Settlement Act funds in exchange for Native Alaskan land claims). In the instant case, avoidance of conflict between federal programs is made especially appropriate by 7 U.S.C. §2014(c)'s explicit recognition of the undesirability of discouraging education and training, and by Title XX's requirement that state plans describe

> how the provision of services under [Title XX] will be coordinated with the plan of the state approved under Part A of subchapter IV [AFDC], . . . and other programs for the provision of related human services within the state, including the steps taken to assure maximum feasible utilization of services under these programs to meet the needs of the law income population . . . .

42 U.S.C. §1397c(2)(H).

This action is closely analogous to *Shea v. Vialpando*, 416 U.S. 251 (1974), in which this Court held that Colorado's policy of allowing only a standard deduction for employment-related expenses in calculating an applicant's income for purposes of determining eligibility for AFDC violated 42 U.S.C. §607(a)(7), which required states to "take into consideration . . . any expenses reasonably attributable to the earning of . . . income." In so holding, this Court considered both the statutory language and the intent of Congress not to provide disincentives for employment. In the instant case, there is of course no language in the Food

Stamp Act explicitly requiring that all education-related expenses be deducted from "income" in determining food stamp eligibility or purchase prices. However, the District Court's order in this case does not require the deduction of all educational *expenses.* Rather, that order requires only that the Appellants not include ultimately in "income" *allowances* that are *received* for "*necessary* commuting expenses, pursuant to an Individual Education and Training Plan." 402 F.Supp. at 408; Butz J.S., pp. 24a-25a. (Emphasis added). Thus, the District Court's Order is carefully tailored to prevent precisely the disincentives to education which result from the Appellants' policies—and which are clearly contrary to the Congressional intent expressed in 7 U.S.C. §2014(c) and in Title XX of the Social Security Act.

As noted earlier in this brief,[23] the impact on a recipient within the plaintiff class of even a $12-per-month reduction in food stamp assistance is substantial. The three-judge court in this case unanimously recognized that under the Appellants' policies, members of the plaintiff class "are . . . placed in the unenviable position of being forced to choose between foregoing participation in a training program or [sic] attempting to stretch already meager resources a bit further in an attempt to obtain adequate nutrition." 371 F.Supp. at 1093, Jt. App. 32-33. As shown above, the position of the members of the plaintiff class is not only unenviable—it is also inconsistent with the Food Stamp Act and the Social Security Act.

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[23] *See* footnote 20, *supra.*

C. The Appellants' Statutory Arguments Are Without Merit.

The Secretary defends the policies at issue in this case in part by asserting that Congress intended that Food Stamp benefits be determined by a household's total income and resources, of whatever kind and from whatever source, and that "public assistance payments" of all kinds should be included in Food Stamp "income." *See* Butz Brief, pp. 19-22. Since government allowances for travel necessitated by participation in an Individual Education and Training Program are "public assistance payments," the argument goes, they are properly included in Food Stamp "income." The primary flaw in this argument is that it ignores the undisputable evidence in the Food Stamp Act's language and history that the "income" upon which Food Stamp benefits are based must relate to the household's food purchasing power. Thus, for example, 7 U.S.C. §2014(a) limits food stamp assistance to "those households whose *income and other resources* are determined to be substantial limiting factors *in permitting them to purchase a nutritionally adequate diet*" (emphasis added), and 7 U.S.C. §2013(a) requires that the Food Stamp Program be one under which "eligible households . . . shall be provided with an opportunity to obtain a nutritionally adequate diet . . . ." *See also* 7 U.S.C. §2011.

Of course, the fact that Food Stamp "income" must relate to food purchasing power does not prohibit the inclusion of general public assistance payments such as AFDC in "income": Since AFDC payments are designed and available for ordinary household expenses, including shelter, clothing, *and food*, such payments do affect an AFDC family's food purchasing *power* in the same way as equivalent amounts of earned income, even

though not all of the AFDC allowance normally will be spent on food purchases. And it is administratively appropriate for the Secretary to utilize the total AFDC grant, rather than the portion thereof specifically allocated to food needs, as an initial measure of income, since it is food purchasing *power*, and not actual food *purchases*, to which food stamp "income" must relate.[24]

However, the allowance for necessary travel in connection with an Individual Education and Training Plan that is at issue in this case is a specialized one that is not available for diversion to food purchases or other ordinary household expenses. Nor does it "free up" any portion of the basic AFDC grant for diversion to food purchases, since it is designed and used for necessary educational travel that is not provided for in the AFDC grant.[25] In this regard, it is clear that the statements that the Secretary quotes from Congressional reports and hearings to support his assertion that all "public assistance payments" should be included in food stamp "income" (Butz Brief, pp. 20-21) were made with reference to general public assistance income, such as AFDC, that is analogous to earned income—i.e., income that is available for ordinary household needs such as food. Certainly, those statements do not contradict the Congressional intent that "income" should relate to food purchasing power that is expressed throughout the

[24]This is supported by 7 U.S.C. §2016(b)'s provision that the price charged for a Food Stamp coupon allotment should not exceed 30% of a household's income.

[25]If only for this reason, the Secretary's reliance on *Compton v. Tennessee Dept. of Public Welfare*, 532 F.2d 561 (6th Cir. 1975) (Butz Brief, pp. 24-25), is misplaced, since the decision in that case was based on a conclusion that additional housing allowances would "free up" income normally expended for shelter for other expenses, including food purchases. *Ibid.* at 565. In any event, notwithstanding this distinction, *Compton* is of dubious validity, *see Anderson v. Butz*, 37 Ad.L.2d 852 (E.D. Calif. 1975).

Food Stamp Act. Unlike an AFDC grant, the special allowances at issue in this case plainly do not affect food purchasing power, and using them as the basis for reductions in Food Stamp assistance is therefore violative of the language and basic purposes of the Food Stamp Act.[26]

Contrary to the Secretary's assertion (Butz Brief, pp. 16-17, 26-28), nothing in the preceding analysis or in the District Court's decision in this case implies that the Appellants must deduct all actual non-food expenses in calculating net Food Stamp "income." The District Court's Order of October 10, 1975, was carefully drawn to require only that "*amounts received* as reimbursement for *necessary* commuting expenses, pursuant to an Individual Education and Training Plan" not be ultimately included in "income" so as to reduce food stamp benefits. 402 F.Supp. at 408, Butz J.S., pp. 24a-25a. Thus, the District Court's decision focused specifically on non-inclusion of *allowances*, and referred to the *deduction* of such allowances only to permit the Appellants an alternative administrative method of achieving the same basic result: the non-inclusion of allowances designated for necessary educational travel under government sponsored training programs in the ultimate "income" figure that determines the level of food stamp assistance.

Moreover, even if the District Court's decision could be read to require the deduction from Food Stamp "income" of *expenses* attributable to necessary travel in connection with Individual Education and Training Plans, it would not imply that all non-food expenses

[26]Even more plainly, the Secretary's argument about the definition of Food Stamp "income" fails to respond to the violation of the Food Stamp Act's (and Social Security Act's) purpose not to discourage education and training toward self-sufficiency.

would have to be similarly deducted. As noted above, there is no dispute in this case that Food Stamp "income" may include funds that are available for food and other ordinary household expenses, whether or not they are actually expended for food; clearly, it would not make sense to allow deductions for all actual non-food expenses, since this would enable all recipients to obtain the maximum Food Stamp "bonus" by simply spending all of their resources on non-food items. But in this regard, expenses for travel that was necessary to participation in an Individual Education and Training Plan would be special, for two related reasons. First, the recipient has no real choice not to incur such expenses, at least if she wishes to continue participation in her Plan; thus, the funds to meet those expenses are not available for food purchases or other ordinary household expenses, and do not affect food purchasing power. And second, such travel expenses are necessary to continued participation in an educational activity that Congress intended to encourage through 7 U.S.C. §2014(c) and Title XX of the Social Security Act.

The Secretary also attempts to justify the reduction of Food Stamp assistance to households receiving government allowances for necessary educational travel on the basis that it avoids discriminating against food stamp recipients who have similar educational travel expenses, but who receive no offsetting government allowance. Butz Brief, pp. 23-24. This proferred justification is invalid for at least two reasons. First, the Secretary's argument asks this Court to assume that there are substantial numbers of recipients in Appellee Hein's financial situation who are able to incur educational travel expenses of $44 per month and still feed, clothe, and house their families. But if $44 per month is subtracted from the bare subsistence income

that is represented by an AFDC grant and normal Food Stamp assistance, there simply will not be enough left for subsistence—with the result that a recipient who is not receiving an additional allowance for necessary educational travel will not be able to afford to engage in that travel, and therefore will not be able to continue his or her education. Indeed, this inability of AFDC households to absorb the costs of educational travel is the only rational justification for granting members of such households allowances for educational travel in the first place.

Even more fundamentally, the Secretary's argument proves too much. It is of course tautologically true that a person who receives an allowance for necessary educational travel will be better off than another who has the same educational travel expenses but no allowance. But the "discrimination" against the latter is wholly attributable, not to food stamp policy, but to the fact that the former has received a governmental *educational* benefit that has not been extended to the latter. In essence, the Secretary's argument is that his food stamp policies are *designed* to vitiate the effects of governmental education benefits; but this is a purpose that is directly contrary to the Congressional intent that is expressed in the Food Stamp Act, 7 U.S.C. §2014(c), and in the federal statutes under which the educational benefits have been extended, 42 U.S.C. §1397, *et seq.*[27]

Both the Secretary and the State Appellants point to 7 C.F.R. 271.3(c)(1)(iii)(*a*), under which 10% of any

[27]Insofar as the Secretary is concerned about recipients with educational expenses who were not receiving government educational benefits, he could of course allow a deduction for a reasonable amount of such benefits, just as he allows a similar deduction for education-related child care expenses, 7 C.F.R. 271.3(c)(1)(iii)(*d*). But that is an issue which is not involved in this case.

"training allowance" (up to $30) may be deducted from Food Stamp "income", as sufficient to meet the statutory and constitutional objections raised by the Appellees. Butz Brief, p. 29; State Appellants' Brief, pp. 6-7. However, this regulation is patently inadequate to meet those objections. First, as applied to Appellee Hein, 271.3(c)(1)(iii)(*a*) provided a deduction of only $4.40 per month—leaving her with $39.60 of her original $44 grant still included in "income."[28] Since this $39.60 was for necessary educational commuting, its receipt should not have resulted in reduction of Appellee Hein's food stamp assistance. In short, the 10% deduction under 271.3(c)(1)(iii)(*a*) deals with only an insignificant portion of the education travel allowance, and hardly solves the basic difficulties with the Appellants' policies under the Food Stamp Act and Title XX. Moreover, it should be noted that the 10% deduction provision is inherently an irrational device for adjusting "income" to reflect food purchasing power, since it provides the largest income deduction to those who have received the largest increase in actual income, and thus the greatest food stamp benefits precisely to those who need it least. Indeed, with regard to the hypothetical Food Stamp recipients with whom the Secretary purports to be especially concerned—i.e., those who have educational expenses without an offsetting government allowance—7 C.F.R. 271.3(c)(1)(iii)(*a*) provides *no* relief.

[28]Contrary to the assertions of the Secretary (Butz Brief at 6-7, footnotes 4, 8), the record in this case shows that the State Appellants were giving Appellee Hein the standardized deduction of 10% of her training allowance—calculated only on the basis of the $44 allowance for necessary commuting under her Individual Education and Training Plan. *See, e.g.*, Plaintiff's Exhibit #2, p. 1 (App. B, p. 1b, *infra*). Reasonably interpreted, the District Court's Order of October 10, 1975, would not require the Appellants to *both* exclude from "income" an allowance for necessary travel under an Individual Education and Training Plan *and* grant an additional 10% deduction; only the former would be required.

In connection with 7 C.F.R. 271.3(c)(1)(iii)(*a*), the Appellants also raise as a justification for their policies the shibboleth of "administrative convenience." However, especially given its appropriate narrowness, the District Court's Order cannot be seen as imposing any special administrative burdens on the Appellants with regard to determining amounts actually expended on educational travel. Again, Appellee Hein's allowance was conceded to be *for necessary* commuting expenses. Similarly, the class of recipients covered by the District Court's Order was defined to include only those receiving allowances as reimbursement for necessary travel in connection with Individual Education and Training Plans. For example, with regard to recipients on "part-time" Training Plans, the expense allowance itself is calculated on the basis of the distances that the recipient must travel in order to participate in his or her Plan, so that the necessary "individual" determinations will already have been made. For those who are covered by the District Court's Order, the Appellants' administrative burdens are considerably less onerous with regard to their necessary travel allowances than with regard to education-related child care expenses. *See* 7 C.F.R. 271.3(c)(1)(iii)(*d*). And to the extent that some recipients may receive training related expense allowances that are not for necessary educational travel, they are not covered by the District Court's Order.

The State Appellants also argue that the District Court's decision could somehow "strike a death blow" to Iowa's Work and Training Program. State Appellants' Brief, p. 8. But it is difficult to see why this is so, since the District Court's order does not require payment of any additional funds for Individual Education and Training Plans, and has no other impact on the program under which such plans are funded. Insofar as the State Appellants' argument is that the District Court's Order

will be burdensome because it will require individual accounting for travel expenses, it fails both because the District Court's Order does *not* require such accounting, see text *supra*, and because that Order requires administrative action, if at all, only with regard to the Food Stamp program. Moreover, the State Appellants' argument totally ignores the *negative* effects of the Food Stamp "income" policies that are challenged in this action on government education and training programs for members of low-income families (see Argument I(B), *supra*).

II.

THE DEFENDANTS' POLICIES ALSO VIOLATE THE EQUAL PROTECTION AND DUE PROCESS GUARANTEES OF THE FIFTH AND FOURTEENTH AMENDMENTS.

A. Equal Protection

By themselves, the statutory issues discussed above require affirmance of the District Court's judgment. However, the District Court also held in the alternative that the Appellants' policy of reducing food stamp benefits on the basis of a government allowance for necessary educational commuting violated Equal Protection guarantees of the Fifth and Fourteenth Amendments. 402 F.Supp. at 405-407, Butz J.S., pp. 16a. In so doing, the District Court noted two irrational classifications; with regard to both classifications, the members of the plaintiff class were discriminated against. The first discrimination noted by the District Court was between food stamp recipients who received allowances for necessary educational commuting and

those recipients who did not receive such allowances; although both groups were similarly situated in terms of income that was available for food purchases, the former received substantially less food stamp assistance. The second discrimination was between food stamp recipients who received allowances for education-related *travel* and those recipients who received allowances for education-related *child care* expenses; again, both groups were similarly situated in terms of food-purchasing power, but the former received less food stamp assistance because the latter were permitted by the Appellants' regulations to deduct from their food stamp "income" their child care expenses. 402 F.Supp. at 405-406, Butz J.S., p. 16a; *see* 7 C.F.R. 271.3(c)(1)(iii)(*d*).

Using "traditional" Equal Protection analysis, *see U.S. Department of Agriculture v. Moreno*, 413 U.S. 528 (1974), the District Court found the classifications described above not to be rationally related to any legitimate governmental interest, and hence unconstitutional. 402 F.Supp. at 406-407, Butz J.S., pp. 16a-19a. This result is so obvious as to require little argument. An allowance that is necessarily utilized for educational commuting expenses can bear no relationship to a recipient's household's need for assistance with regard to food. Equally clearly, babysitting expenses necessitated by education and training of a recipient have no greater negative effect on a recipient's food purchasing power than travel expenses that are necessary to the same education and training.

The justifications suggested by the Appellants for these discriminations, Butz Brief pp. 32-36, State Appellants' Brief, pp. 7-9, have already been answered in this brief in connection with the statutory violations that result from the Appellants' Food Stamp "income" policies (Argument I(c), *supra*). In particular, the Secretary's concentration on a hypothetical class of

Food Stamp recipients who incur educational expenses but who receive no offsetting government training related expense allowance ignores the fact that even if such recipients exist, there remains an irrational discrimination between (1) Food Stamp recipients who receive an allowance for necessary travel in connection with Individual Education and Training Plans and (2) recipients who are not participating in any training program. Moreover, as noted earlier, any discrimination against the Secretary's hypothetical class of recipients is attributable solely to their lack of government *educational* benefits, and has nothing to do with Food Stamp assistance. Finally, the Appellants ignore the second discrimination relied upon by the District Court, namely, the discrimination between education-related travel and education-related child care.[29]

B. Due Process

The District Court also concluded that the Appellants' policy of reducing food stamp assistance on the basis of a government allowance for necessary educational commuting expenses violated the Due Process guarantees of the Fifth and Fourteenth Amendments. 402 F.Supp. at 407-408, Butz J.S., pp. 19a-22a. In effect, the Appellants' policy presumes, without any opportunity for the recipient to show otherwise, that an allowance for necessary educational travel is freely and totally available for general, non-education expenses

[29]The State Appellants' apparent suggestion (State Appellants' Brief, p. 7) that Appellee Hein should have moved to Davenport in order to avoid the costs of commuting can only be characterized as incredible. The State Appellants themselves *approved* Appellee Hein's Individual Education and Training Plan, which included the Muscatine-to-Davenport commute, and provided an allowance for the necessary commuting expenses. Moreover, the State Appellants ignore the costs inherent in moving an entire household to a new location.

such as food purchases and thus reduces the recipient's household's need for food stamp assistance. This is precisely the sort of conclusive presumption that this Court recently has invalidated in such cases as *Stanley v. Illinois*, 405 U.S. 645 (1972), and *U.S. Department of Agriculture v. Murry*, 413 U.S. 508 (1973).

Even when conclusive presumptions were such that they might often be correct, this Court has invalidated them, *see U.S. Department of Agriculture v. Murry, Stanley v. Illinois, supra. A fortiori*, a presumption such as the totally irrational one involved in this action must also be invalid: Since the allowances received by Appellee Hein and by the members of the represented class defined by the District Court's Order were reimbursement for travel that was necessary to their continued participation in Individual Education and Training Plans, the conclusive presumption created by the policies involved in this action would essentially always be incorrect. *See* 402 F.Supp. at 407, Butz J.S., p. 21a.[30]

This result is not changed by this Court's decision in *Weinberger v. Salfi*, 422 U.S. 749 (1975). Contrary to the apparent implication of the Brief for the Secretary, (pp. 37-38), *Salfi* did not overrule *U.S. Department of Agriculture v. Murry, supra*, with regard to statutory or regulatory schemes involving rights to public assistance.

[30]It would of course be *possible* for a recipient to use his or her educational travel allowance for a given month to purchase food. But this would result in the recipient's not being able to continue participating in his or her Education and Training program–with the result that the allowance would be lost the following month. Moreover, especially in light of the presumption by the Appellants on which the giving of the allowance must be based–i.e., that it is needed for the additional expenses of educational travel–it would be constitutionally invalid to presume *conclusively* that the allowance was not being spent on such travel. Finally, there is no dispute in the record in this case that Appellee Hein in fact did continue her educational commuting under her Individual Education and Training Plan. Jt. App. 24.

The result in *Salfi* was based primarily on this Court's conclusion that Congress' restriction of Social Security survivors' benefits to those who had a relationship to a deceased wage earner for at least nine months prior to death was intended only as a definition of the kinds of social risks that Con ress wished to insure persons against through the Social Security system. The duration-of-relationship restriction was held to be a rational prophylactic precaution against marriages for the purpose of obtaining benefits, and not intended as a conclusive presumption that any given marriage in fact was a "sham." 95 S.Ct. at 2474-75. This Court was careful to distinguish *Vlandis v. Kline*, 412 U.S. 441 (1973), on the basis that "*where Connecticut purported to be concerned with residency*, it might not at the same time deny to one seeking to meet its test of residency the opportunity to show factors bearing on that issue." 95 S.Ct. at 2470 (emphasis added).

Plainly, this case falls within the coverage of *Stanley*, *Murry*, and *Vlandis*, rather than the rationale of *Salfi*. As shown in Part I above, Congress has indicated through the language of the Food Stamp Act that the Act's central concern is with the food purchasing power (or, stated somewhat differently, the nutritional needs) of low-income households. 7 U.S.C. §§2011, 2013(a), 2014(a). Although the Secretary of Agriculture has the authority to define "income" for purposes of determining food stamp benefits, that authority must be exercised consistently with the purposes of the Act, which plainly relates "income and resources" to food purchasing power. Since Congress clearly has "purported to be concerned with [food purchasing power]," *cf. Vlandis v. Kline*, *supra*, the Secretary's regulations may not arbitrarily define as "income" allowances that do not have any apparent effect on food-purchasing power and at the same time deny to recipients of such

allowances any opportunity to show that their needs for food assistance are unaffected by the allowances.[31]

III.

EVEN AS APPLIED TO GENERAL EDUCATIONAL EXPENSE ALLOWANCES THAT WERE NOT FOR NECESSARY COMMUTING EXPENSES, THE CHALLENGED FOOD STAMP "INCOME" – DETERMINATION POLICIES WOULD BE INVALID.

The preceding sections of this brief have focused on government allowances for necessary travel in connection with participation in Individual Education and Training Plans. As shown in the Statement of the Case, *supra*, this is the proper focus in this case: Appellee Hein's allowance was stipulated to be for necessary commuting in connection with her Individual Education and Training Plan, and the members of the class defined by the District Court receive the same kind of allowance. However, since the Appellants have concentrated much of their briefing on "training related expense allowances" which are not designated for specific uses and which in fact may not be wholly necessary for education-related expenses in individual cases, Appellee will demonstrate below that even with regard to such an allowance, the Appellants' policy of reducing food stamp assistance by including the allowance in "income" would be statutorily and constitutionally invalid.

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[31] *Lavine v. Milne*, 96 S.Ct. 1010 (1976), relied upon by the State Appellants (State Appellants' Brief, p. 11), is even more clearly inapplicable, since it dealt with a *rebuttable* presumption.

First, under the Food Stamp Act, even a non-individualized and possibly non-necessary training related expense allowance could not properly be included totally and conclusively in "income" because it would not have the same effect on food purchasing power as general income such as AFDC or earned income. For example, whether or not every "full-time" participant in an Individual Education and Training Plan needs $60 per month for Plan-related expenses, the Appellants' grant of that sum rationally must reflect an administrative judgment, or presumption, that as a general matter participants in full-time Individual Education and Training Plans will have additional expenses of that magnitude and that it is not worth the administrative cost to determine on an individual basis which recipients have fewer expenses. Certainly there is no reason to suppose that a "*training related* expense allowance" received under an Individual Education and Training Plan is designed to be used to meet food and other ordinary household expenses; indeed, if it were designed for that purpose, it clearly would be contrary to the intent and language of Title XX of the Social Security Act, which provides in pertinent part that "[n]o payment may be made under this section with respect to that expenditure under Section 602 or 622 of this title." 42 U.S.C. §1397a(a)(8).

In short, the State Appellants have made an administrative judgment that for participants in full-time Individual Education and Training Plans, a monthly training related expense allowance of $60 is necessary and proper to meet additional expenses attributable to training (and therefore does not increase the income that is available for food purchases). The Appellants' food stamp "income" policies are not simply inconsistent with this administrative judgment—they in fact assume the *most* contrary possible fact:

that *all* of even a generalized "training related expense allowance" is available for ordinary household expenses such as food. In essence, the Appellants' policies would treat a general "training related expense allowance" precisely like additional earned income or an increase in AFDC assistance (which would be available for general household expenses, including food). But this is contrary both to common sense and to the very basis for granting such an allowance in the first place. Moreover, if a recipient were to divert all of such an allowance to non-educational expenses, she would in all but the most extraordinary circumstances not be able to continue attending her training program—and hence would be ineligible for either the training expense allowance *or* the basic Individual Education and Training Plan during the following month.

In addition to violating the basic intent of Congress that Food Stamp Act "income" should reflect food purchasing *power*, the Appellants' policies, even as applied to a general "training related expense allowance," would violate the purpose of the Food Stamp Act and the Social Security Act of encouraging poor persons to obtain education and training toward self-sufficiency. As noted above, the granting of a general "training related expense allowance" of $60 to full-time trainees under Individual Education and Training Plans rationally must reflect an administrative judgment that most such trainees will have to bear costs of that magnitude in connection with their Plans. In automatically reducing the food stamp assistance of all such trainees by irrationally presuming that *none* of them needed *any* of the $60 for training-related expenses, the Appellants' policies would guarantee that a large number of food stamp recipients who were approved for Individual Education and Training Plans would be discouraged from participating in such Plans

because their ability to provide adequate nutrition for their families would be reduced if they did participate. Obviously, a training related expense allowance is designed to facilitate and encourage participation in Individual Education and Training Plans by compensating trainees for the additional expenses connected with their training activities; equally obviously, the Appellants' food stamp policies would serve to *dis*courage such participation by effectively reducing that compensation, in violation of 7 U.S.C. §2014(c) and of Title XX of the Social Security Act.

The application of the Appellants' food stamp "income"-determination policies to general training related expense allowances also would violate the Equal Protection and Due Process guarantees of the Fifth and Fourteenth Amendments. As discussed above, the Appellants' policies would treat training related expense allowances exactly like ordinary income from such sources as employment and AFDC, thus assuming that all of such an allowance was disposable for ordinary household expenses. Again, however, such an assumption would be both irrational and contrary to the only justifiable rationale for granting the allowance in the first place, since its result would be that persons receiving training related expense allowances would be provided with only the same amount of food stamp assistance as others who were better off by virtue of receiving an equivalent additional amount of generally disposable income (such as AFDC)—and substantially *less* food stamp assistance than those who did not receive training related expense allowances (but who still had the same food purchasing power).[32] Thus, the Appellants' policies would create classifications for which

[32]It is *possible* that in a few extraordinary cases, participants in full-time Individual Education and Training Plans will have *no* training related expenses. Such persons *would* be in the same position in terms of food purchasing power as persons receiving $60 more in AFDC assistance. But the possible existence of a few such cases is hardly a rational basis for a policy that assumes, contrary to the basic rationale for the training related expense allowance, that the allowance is *never* needed in *any* degree.

there was no rational basis, even in the hypothetical context of general training related expense allowances.

At the same time, the Appellants' Food Stamp "income" policies would create an irrebutable presumption that a recipient of a general training related expense allowance of $60 in connection with an Individual Education and Training Plan would thereby have $60 additional income available for household needs such as food. While it is *conceivable* that this presumption would be true in some extraordinary situations, it is clear that in most situations it would not be true, and that it is directly contrary to the presumption on which the allowance is based. This is classically the kind of irrebutable presumption that this Court has repeatedly invalidated under the Due Process clauses of the Fifth and Fourteenth Amendments.[33]

Thus, even if this case and the District Court's decision had involved generalized training related expense allowances that were not for necessary travel in connection with Individual Education and Training Plans, a decision by the District Court that the application of the Appellants' Food Stamp "income" policies to the allowances so as to reduce Food Stamp assistance was statutorily and constitutionally invalid would have been correct. But this is an issue that is not actually presented by this case.

[33]This is not to say that the Appellants could not reduce food stamp assistance in individual cases by showing that a general training related expense allowance was larger than the recipients' needs, or even that the Appellants could not require recipients to demonstrate their expenses in order to rebut a non-conclusive presumption, *cf. Lavine v. Milne*, 96 S.Ct. 1010 (1976). What is objectionable from a Due Process standpoint is the ***conclusive*** nature of the presumption, especially given its irrationality in most cases.

IV.

THE DISTRICT COURT'S ORDER DOES NOT VIOLATE THE ELEVENTH AMENDMENT.

The District Court's decision in this case included an order that

> the defendants recompute the adjusted net income for each person who is presently participating in the food stamp program and who has been paying a wrongfully high price for his food stamp allotment, and that the defendants [make] a forward adjustment of the price of future stamps by reducing the price of food stamp coupons in future months by whatever amount necessary for as many months as necessary so as to fully compensate the recipient financially for food stamps wrongfully denied in the past.

402 F.Supp. at 408; Butz J.S., p. 25a. The State Appellants argue that this order violates the Eleventh Amendment to the United States Constitution. However, this argument completely misconstrues the District Court's order and the nature of the interests protected by the Eleventh Amendment.

Broadly stated, the purpose of the Eleventh Amendment is to bar federal court actions by individuals seeking monetary damages against unconsenting states in the absence of specific Congressional authorization for such actions. *Cf., Fitzpatrick v. Bitzer,* 96 S.Ct. 2666 (1976). Because the District Court's order in this case does not impose any monetary damages on the State (or the State Appellants) there is no Eleventh Amendment issue.

Under the Food Stamp Act, the differential between the value of Food Stamp coupons and the prices paid

for them by recipients is borne exclusively by the federal government. 7 U.S.C. §§2013(a), 2018; 7 C.F.R. 272.4, 272.5; Butz Brief, p. 4, n.2. Thus, that portion of the District Court order requiring "a forward adjustment" of the prices of Food Stamps to be purchased in the future by members of the plaintiff class whose Food Stamp assistance was wrongfully reduced under the invalidated policies of the Appellants will not result in any direct cost to the State. The State Appellants, however, apparently argue that because the State must pay one-half the costs of administering the "forward adjustment," there is a violation of the Eleventh Amendment. State Appellants' Brief, pp. 11-14. This argument is clearly defective, for at least two reasons. First, any administrative costs that may be incurred by the State will be purely ancillary to the observance of a valid judicial decree,[34] and therefore are not the equivalent of money damages under the Eleventh Amendment. *See Edelman v. Jordan,* 415 U.S. 651, 668 (1974). Second, the District Court's Order does not even really require the State Appellants, as opposed to the Secretary, to pay any administrative costs. Rather, the requirement that one-half of such costs be paid by the State is imposed by the Food Stamp Act, specifically 7 U.S.C. §2024. No State is *required* to participate in the Federal Food Stamp program. But participating states are required by statute, as conditions of their participation, to satisfy a member of requirements and to undertake a number of

[34]The form of the relief is not challenged by the Appellants on other than Eleventh Amendment grounds, and was clearly within the power of the District Court to grant appropriate relief. *See Carter v. Butz,* 479 F.2d 1084 (3d Cir. 1973), *aff'ing, Tindall v. Hardin,* 330 F.Supp. 563 (W.D. Pa. 1972); *Stewart v. Butz,* 356 F.Supp. 1345 (W.D. Ky. 1973).

responsibilities, including certifying households, 7 U.S.C. §2019(b), providing administrative appeals, 7 U.S.C. §2019(e)(8), and bearing one-half the administrative costs of the program, 7 U.S.C. §2024. Especially in light of the Food Stamp Act's administrative appeals provisions, the administrative costs raised by the State Appellants are of the kind which the states must expect to incur as a result of their participation in the Food Stamp program. At the same time, there can be no question as to the validity of Congress' imposing on the states' conditions such as these for their voluntary participation in a primarily federally funded public assistance program. *See Steward Machine Co. v. Davis,* 301 U.S. 548 (1937).

In short, any administrative costs which the state may have to bear as a result of the District Court's Order are merely ancillary to a valid prospective order, and are clearly anticipated by the Food Stamp Act. These ancillary administrative costs are of the sort that inhere in essentially any decision in favor of recipients in a federal action with regard to public assistance payments, *see, e.g., U.S. Dept. of Agriculture v. Moreno,* 413 U.S. 528 (1973), *U.S. Dept. of Agriculture v. Murry,* 413 U.S. 508 (1973), *Lewis v. Martin,* 397 U.S. 552 (1970), *King v. Smith,* 392 U.S 309 (1968), and clearly do not raise any legitimate Eleventh Amendment issue.

CONCLUSION

The reduction of Food Stamp assistance on the basis of a government allowance for necessary travel in connection with an education and training program funded under Title XX of the Social Security Act violates the Food Stamp Act's central purpose to increase the food purchasing power of low-income

households; penalizes and discourages participation in such education and training programs, in violation of the Food Stamp Act and the Social Security Act; and violates constitutional guarantees of Equal Protection and Due Process. The District Court's judgment enjoining such reductions should be affirmed.

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APPENDIX A: STATUTES AND REGULATIONS

7 U.S.C. §2014(a):

> Except for the temporary participation of households that are victims of a disaster as provided in subsection (b) of this section, participation in the food stamp program shall be limited to those households whose income and other financial resources are determined to be substantial limiting factors in permitting them to purchase a nutritionally adequate diet.

42 U.S.C. §1397:

> For the purpose of encouraging each State, as far practicable[1] under the conditions in that State, to furnish services directed at the goal of–
>
> (1) achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency,
>
> (2) achieving or maintaining self-sufficiency, including reduction or prevention of dependency,
>
> (3) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families,
>
> (4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care, or
>
> (5) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.
>
> there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States under section 1397a of this title.

42 U.S.C. §1397a(a):

(1) From the sums appropriated therefor, the Secretary shall, subject to the provisions of this section and section 1397b of this title, pay to each State, for each quarter, an amount equal to 90 per centum of the total expenditures during that quarter for the provision of family planning services and 75 per centum of the total expenditures during that quarter for the provision of other services directed at the goal of–

(A) achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency,

(B) achieving or maintaining self-sufficiency, including reduction or prevention of dependency,

(C) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families.

(D) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care, or

(E) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

including expenditures for administration (including planning and evaluation) and personnel training and retraining directly related to the provision of those services (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions). Services that are directed at these goals include, but are not limited to, child care services, protective services for children and adults, services for children and adults in foster care,

services related to the management and maintenance of the home, day care services for adults, transportation services, training and related services, employment services, information, referral, and counseling services, the preparation and delivery of meals, health support services and appropriate combinations of services designed to meet the special needs of children, the aged, the mentally retarded, the blind, the emotionally disturbed, the physically handicapped, the alcoholics and drug addicts.

* * *

(4) So much of the aggregate expenditures with respect to which payment is made under this section to any State for any fiscal year as equals 50 per centum of the payment made under this section to the State for that fiscal year must be expended for the provision of services to individuals–

(A) who are receiving aid under the plan of the State approved under part A of subchapter IV of this chapter or who are eligible to receive such aid, or

(B) whose needs are taken into account in determining the needs of an individual who is receiving aid under the plan of the State approved under part A of subchapter IV of this chapter, or who are eligible to have their needs taken into account in determining the needs of an individual who is receiving or is eligible to receive such aid, or

(C) with respect to whom supplementary security income benefits under subchapter XVI of this chapter or State supplementary payments, as defined in section 1397f(1) of this title, are being paid, or who are eligible to have such benefits or payments paid with respect to them, or

(D) whose income and resources are taken into account in determining the amount of supplemental payments, as defined in section 1397f(1) of this title, being paid with respect to an individual, or whose income and resources would be taken into account in determining the amount of such benefits or payments to be paid with respect to an individual who is eligible to have such benefits or payments paid with respect to him, or

(E) who are eligible for medical assistance under the plan of the State approved under subchapter XIX of this chapter.

* * *

42 U.S.C. §1397c:

A State's services program planning meets the requirements of this section if, for the purpose of assuring public participation in the development of the program for the provision of the services described in section 1397a(a)(1) of this title within the State–

(1) the beginning of the fiscal year of either the Federal Government or the State government is established as the beginning of the State's services program year; and

(2) at least ninety days prior to the beginning of the State's services program year, the chief executive officer of the State, or such other official as the laws of the State provide, publishes and makes generally available (as defined in regulations prescribed by the Secretary after consideration of State laws governing notice of actions by public officials) to the public a proposed comprehensive annual services program plan prepared by the agency designated pursuant to the requirements of section 1397b(d)(1)(C) of this title and, unless the laws of the State provide otherwise, approved by the

chief executive officer, which sets forth the State's plan for the provision of the services described in section 1397a(a)(1) of this title during that year, including–

* * *

(H) a description of how the provision of services under the program will be coordinated with the plan of the State approved under part A of subchapter IV of this chapter, the plan of the State developed under part B of that subchapter, the supplemental security income program established by subchapter XVI of this chapter, the plan of the State approved under subchapter XIX of this chapter, and other programs for the provision of related human services within the State, including the steps taken to assure maximum feasible utilization of services under these programs to meet the needs of the low income population,

* * *

7 C.F.R. 271.10, App. A:

* * *

Monthly coupon allotments and purchase requirements–48 States and District of Columbia

Monthly net income	For a household of–							
	1 person	2 persons	3 persons	4 persons	5 persons	6 persons	7 persons	8 persons
	The monthly coupon allotment is–							
	$50	$92	$130	$166	$198	$236	$262	$298
	And the monthly purchase requirement is–							
0 to $19.99	0	0	0	0	0	0	0	0
$20 to $29.99	1	1	0	0	0	0	0	0
$30 to $39.99	4	4	4	4	5	5	5	5
$40 to $49.99	6	7	7	7	8	8	8	8
$50 to $59.99	8	10	10	10	11	11	12	12
$60 to $69.99	10	12	13	13	14	14	15	16
$70 to $79.99	12	15	16	16	17	17	18	19
$80 to $89.99	14	18	19	19	20	21	21	22
$90 to $99.99	16	21	21	22	23	24	25	26
$100 to $109.99	18	23	24	25	26	27	28	29
$110 to $119.99	21	26	27	28	29	31	32	33
$120 to $129.99	24	29	30	31	33	34	35	36
$130 to $139.99	27	32	33	34	36	37	38	39
$140 to $149.99	30	35	36	37	39	40	41	42
$150 to $169.99	33	38	40	41	42	43	44	45
$170 to $189.99	38	44	46	47	48	49	50	51
$190 to $209.99	38	50	52	53	54	55	56	57
$210 to $229.99	40	56	58	59	60	61	62	63
$230 to $249.99		62	64	65	66	67	68	69
$250 to $269.99		68	70	71	72	73	74	75
$270 to $289.99		72	76	77	78	79	80	81
$290 to $309.99		72	82	83	84	85	86	87
$310 to $329.99			88	89	90	91	92	93
$330 to $359.99			94	95	96	97	98	99
$360 to $389.99			102	104	105	106	107	108
$390 to $419.99			111	113	114	115	116	126
$420 to $449.99			112	122	123	124	125	135
$450 to $479.99				131	132	133	134	144
$480 to $509.99				140	141	142	143	153
$510 to $539.99				142	150	151	152	162
$540 to $569.99				142	159	160	161	171
$570 to $599.99					168	169	170	180
$600 to $629.99					170	178	179	180
$630 to $659.99					170	187	188	181
$660 to $689.99					170	196	197	198
$690 to $719.99						204	206	207
$720 to $749.99						204	215	216
$750 to $779.99						204	224	225
$780 to $809.99						204	226	234
$810 to $839.99							226	243
$840 to $869.99							226	252
$870 to $899.99							226	258
$900 to $929.99								258
$930 to $959.99								258
$960 to $989.99								258
$990 to $1,019.99								258

SCHEDULE OF ALLOWANCES

Aid to Dependent Children

(This Schedule, effective December 1, 1974, constitutes an allowance of 95% of need, based upon the Consumer's Price Index of 138.5 for December 1973 as related to the base period 1967.)

Number of Persons	1	2	3	4	5	6	7	8	9	Each Additional Person
Amount	145	222	294	356	415	456	518	576	621	69

CHART FOR DETERMINING INCOME IN KIND – ADC
(All figures are on a per person basis.)

Number of Persons	1	2	3	4	5	6	7	8	9
Shelter	41.50	28.50	24.25	21.00	18.00	15.25	14.00	12.75	11.50
Utilities	22.50	14.50	11.75	9.75	8.50	6.75	6.50	6.25	5.25
Supp. & Repl.	9.50	5.50	4.00	3.25	3.00	2.50	2.25	2.00	1.75
Food	39.00	35.25	33.75	32.25	31.25	30.00	30.00	30.00	30.00
Clothing	11.25	11.25	11.25	11.25	11.25	11.25	11.25	11.25	11.25
Per. Care & Supp.	6.75	6.75	6.75	6.75	6.75	6.75	6.75	6.75	6.75
Med. Cab. Supp.	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50
Communications	13.00	7.75	4.75	3.25	2.75	2.00	1.75	1.50	1.00

See Employees' Manual, Section V, Chapter 5, under heading of REQUIREMENTS for instructions covering the use of this Schedule.

IOWA DEPARTMENT OF SOCIAL SERVICES
EMPLOYEES' MANUAL, Page XIII-8-5
(as revised October 15, 1974;
still in effect)

INDIVIDUAL EDUCATION AND TRAINING PLAN

PROCESS (cont'd)

Training Related Expense

Individual Education and Training Plan clients attending institutional training facilities are entitled to a training related expense allowance. Clients involved in *part-time* training plan receive .15¢/mile for those miles traveled between home, child care facility and training facility. The total monthly allowance however cannot exceed $45.00. Clients enrolled in *full-time* training programs are entitled to a full monthly TRE of $60.00. Full time in interpreted as being the period of time established by the training facility as being "full time". In the absence of such an established time framework, full time will be considered a minimum of 30 hours/week. Any plan involving fewer hours than the criteria established for full time will be considered part-time. Payment of TRE should commence for that month that the client begins training and must be terminated once the client has completed. If a client was already involved in training prior to requesting an IETP, payment of TRE will commence for that month that the plan is approved. TRE may continue for one month after the client has completed training if, during this month, the client is actively seeking employment. The TRE is a vendorized payment and received as a warrant separate from

the regular PA grant warrant. The caseworker is responsible for initiating and terminating TRE and does so by means of the Individual Education and Training Plan Status Report, Form AA-4157-0, see Appendix for forms and instructions.

Writing the Individual Education and Training Plan

The IETP program is designed with the intent of facilitating employment for public assistance clients. No IETP may be approved unless a specific attainable vocational goal is specified. It is understood that basic programs such as GED, Basic Adult Education, Vocational Evaluation, etc. may not include specific vocational goals, but must still be employment oriented.

Once the caseworker has compiled all the necessary information regarding the client's social situation, training/employment goals, child care, and TRE entitlement, the Individual Education and Training Plan, form WI-3301-0 is completed. See Appendix for forms and instructions. The plan shall then be submitted to the DSS Field Office for approval. *No plan may become active until the caseworker has received specific approval for that training plan from the DSS Field Office.*

The department's responsibility for IETP financial assistance begins for that month during which the plan is approved.

IOWA DEPARTMENT OF SOCIAL SERVICES
***EMPLOYEES' MANUAL*, Page XIII-8-5**
(as of January 15, 1974)

INDIVIDUAL EDUCATION AND TRAINING PLAN

PROCESS (cont'd)

Training Related Expense

Individual Education and Training Plan clients attending institutional training facilities are entitled to a training related expense allowance. Clients involved in part-time training plans receive 10¢/mile for those miles traveled between home, child care facility and training facility. The total monthly allowance however cannot exceed $44.00. Clients enrolled in full-time training programs are entitled to a full monthly TRE of $44.00. Full time is interpreted as being the period of time established by the training facility as being "full time". In the absence of such an established time framework, full time will be considered a minimum of 30 hours/week. Any plan involving fewer hours than the criteria established for full time will be considered part-time. Payment of TRE should commence for that month that the client begins training and must be terminated once the client has completed. If a client was already involved in training prior to requesting an IETP, payment of TRE will commence for that month that the plan is approved. TRE may continue for one month after the client has completed training if, during this month, the client is actively seeking employment. The TRE is a vendorized payment and received as a warrant separate from the regular PA grant warrant. The caseworker is

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Once the caseworker has compiled all the necessary information regarding the client's social situation, training/employment goals, child care, and TRE entitlement, the Individual Education and Training Plan, form WI-3301-0 is completed. See Appendix for forms and instructions. The plan shall then be submitted to the DSS Field Office for approval. *No plan may become active until the caseworker has received specific approval for that training plan from the DSS Field Office.*

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STATE OF IOWA *TITLE XX PLAN*, p. 28

SUMMARY OF OBJECTIVES AND SERVICES

Goal I

To achieve or maintain economic self-support.

* * *

Individual Education and Training Plan Program – to provide to Aid to Families with Dependent Children recipients opportunities for learning or increasing job skills involving vocational classroom training, job placement, and other services to facilitate economic self-support. These services are not available under the Work Incentive Program guidelines and Individual Education and Training Plan Program allows greater flexibility and depth in meeting specialized training and education needs. It is anticipated that the number of individuals which this Objective will reach will be 5,305.

I-2 Individual Education and Training Plan Program, Recipients of Aid to Families with Dependent Children

SERVICES:

Employment/Educational Services
Day Care Services
  Day Care Centers
  In-Home Day Care
  Family Day Care Homes
Transportation
Home Management/Functional Education
Homemaker
Family Planning
Health-Related – Families and Children
Housing

APPENDIX B: ADDITIONAL RECORD ITEMS

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

KAREN HEIN, Individually and on behalf of all other persons similarly situated, Plaintiff	)	Civil Action Number _____
vs.	)	
KEVIN J. BURNS, Individually and in his capacity as Commissioner of Social Services; and ELIZABETH MASTERSON, Individually and in her capacity as Director of the Muscatine County Department of Social Services, Defendants	)	AFFIDAVIT

STATE OF IOWA)
) ss.
COUNTY OF MUSCATINE)

Karen Hein, being first duly sworn, deposes and states:

1. She resides at 1114 Filmore, Muscatine, Iowa.
2. She is the Plaintiff in the above-entitled action.
3. She has the legal custody of two minor children, ages 12 and 10.
4. She is currently receiving training as a Student Nurse under the Individual Training Program at Saint Luke's School of Nursing in Davenport, Iowa.
5. She has no savings and she has no income except: $30 a month from the rent of half a house she partially owns; $199 Aid to Dependent Children; $44 reimbursement for necessary commuting to Saint Luke's School

of Nursing under said Individual Training Program; and food stamp assistance for which she pays $58 a month.

6. That her monthly expenses average $331 per month.

7. That the entire above income is inadequate to provide for the basic necessities of life for herself and her two dependent children.

8. That on September 6, 1972, Mrs. Hein's Individual Training Plan was approved by the Department of Social Services, which provided for payment of her tuition at Saint Luke's School of Nursing and for a $44 monthly reimbursement for necessary commuting expenses under said Plan.

9. That at about the same time, because of said transportation reimbursement, the purchase price of the amount of food stamps Mrs. Hein was allowed to secure each month was increased by $12, raising said price from $46 to $58 per month, pursuant to Employees' Manual VII-3-16-item d.

10. That she appealed the decision to the Muscatine Department of Social Services, but said office affirmed the decision in a hearing held on February 14, 1973.

11. That she further appealed to the Commissioner of the State Department of Social Services in Des Moines, but the Commissioner affirmed the decision of the Muscatine Department of Social Services on February 23, 1973.

12. That Affiant has read the foregoing Motion for a Preliminary Injunction and knows the contents thereof, and that the same is true to the best of her knowledge, information, and belief.

/s/ Mrs. Karen Hein
Mrs. Karen Hein

Subscribed and sworn to before me this 16th day of October, 1973.

/s/ Robert DeKoch
Notary Public in and for
Muscatine County

Deliberately left BLANK

with $44 allowance, without deductions

PLAINTIFF'S EXHIBIT #2, HEARING OF JANUARY 24, 1974

PLAINTIFFS
Exhibit 2
Cause No. 73-240-1
Date JAN 24 1974
U. S. District Court
Southern Dist. of Iowa

State of Iowa
Department of Social Services

ELIGIBILITY AND BASIS OF ISSUANCE WORK SHEET

PART A

Karen Hein — Social Security No. 484-48-1532
Head of Household

NEW APPLICATION _____ RE-APPLICATION _____ RE-CERTIFICATION ✓

NUMBER OF ELIGIBLE PERSONS IN HOUSEHOLD 3

4b

PART B

LIST PERSONS WITH INCOME, METHOD OF VERIFICATION, AND AMOUNT

NO.	NAME	METHOD OF VERIFICATION	AMOUNT
	Karen – ADC	C/R	$220.00
	" income rental prop	"	$ 28.75
	" Ind. Training Plan	"	$ 44.00
			$
			$
			$

MONTHLY NET INCOME $292.75
If earned income or training program---less 10%, not to exceed $30.00 $ 4.40

TOTAL MONTHLY NET INCOME $288.35

PART C

LIQUID RESOURCES

5b

NAME	DESCRIPTION	METHOD OF VERIFICATION	AMOUNT
Karen	Cash	C/R	$ 20
Anthony	savings acct	"	$ 30
			$
			$

TOTAL LIQUID RESOURCES $ 50

CP-912223 9/72

NON-LIQUID RESOURCES

DESCRIPTION	VALUE	LESS INDEBTEDNESS	NET VALUE
home	exempt		
car			

TOTAL NON-LIQUID RESOURCES $ –

TOTAL VALUE OF LIQUID AND NON-LIQUID RESOURCES $ 50

PART D

ENTER VERIFICATION IF NEEDED

6b

A.	MEDICAL EXPENSES	+ –		
B.	CHILD CARE	+ –		
C.	TUITION AND MANDATORY FEES FOR EDUCATION	+ –		
D.	OTHER HARDSHIP DEDUCTIONS	+ –		
E.	TOTAL	–		
F.	TOTAL MONTHLY NET INCOME (Total of Part B)		288.35	
G.	LESS LINE E		–	
H.	TOTAL		288.35	
			x .30	
I.	TOTAL		86.5050	
J.	RENT OR 1/2 MORTGAGE PAYMENT MONTHLY	+ 70.87		C/R
K.	UTILITY ALLOWANCE 1/2 actual	+ 28.97		
L.	1/2 TAXES AND INSURANCE MONTHLY	+ 25.88		
M.	OTHER SHELTER DEDUCTIONS	+ 22.25		see letter 8/3
N.	TOTAL	147.97		
O.	LESS LINE I	– 86.51		
P.	TOTAL	61.46		
Q.	ENTER LINE H		288.35	
R.	LESS LINE P		– 61.46	
S.	ADJUSTED NET INCOME		226.89	

7b

PART E

ADJ. NET INCOME	NO. PERSONS	COUPON ALLOTMENT	CASH	BONUS	TOTAL
226.89	3	FULL	58		94
		THREE-FOURTHS	43.50		71
		ONE-HALF	29		47
		ONE-FOURTH	14.50		24

_____ APPLICATION APPROVED. CERTIFICATION: FROM _____

THROUGH _____

_____ APPLICATION DENIED.

REASON _____

_____ APPLICATION PENDING.

AUTHORIZED REPRESENTATIVE _____
(Member of Household)

The information stated on the household's application has been reviewed and evaluated by

_____ /s/ Rita Broders _____ _____
(Caseworker's Signature) (Date)

ADM 7214-0

No. 75-1261

In the Supreme Court of the United States

OCTOBER TERM, 1976

JOHN A. KNEBEL, SECRETARY OF AGRICULTURE, APPELLANT

v.

KAREN HEIN, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

REPLY BRIEF FOR THE APPELLANT

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

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v.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

REPLY BRIEF FOR THE APPELLANT

Appellees reiterate throughout their brief, as the factual basis on which their analysis rests, that this case involves only the treatment, under the Secretary's food stamp regulations, of an "allowance * * * that is not available for diversion to food purchases or other ordinary household expenses" (*e.g.*, Br. 24). This persistent assertion is contrary to fact. The training allowance received by appellees manifestly is available for diversion to food purchases and other ordinary household expenses: although appellees characterize the allowance as being "for necessary travel" (see, *e.g.*, Br. 24), in fact the allowance is paid pursuant to a state regulation providing for the payment of a flat monthly "training allowance";[1] recipients are free

[1]The allowance described in the text is the one made available to full-time trainees. With respect to persons participating in a part-time training plan, the regulation provides an allowance for transportation at the rate of 10 cents (now 15 cents) per mile with a

to use the allowance as they please and are entitled to the full amount of the allowance without regard to whether they incur any travel or other incidental training expenses. See Appellants' brief in No. 75-1355, at 7 and App. D, p. 6a; see also our opening brief at 14-15.

Accordingly, appellees' insistence that they are litigating only with respect to an allowance "for necessary travel," if taken at face value, must mean that they contest the Secretary's treatment not of the training allowance generally but only of that portion of each recipient's allowance that, in any given month, is actually expended on travel.[2] Appellees never explicitly narrow their disagreement with the Secretary to that point, but such a delimitation is implicit in much of what they say.[3]

---

maximum of $44 (now $45) per month. See Appellants' brief in No. 75-1355, App. D, p. 6a. Since appellee Hein appears to have received the full $44 allowance each month without any showing of actual travel expenses, it appears that she was a full-time trainee.

[2]There appears to be no direct evidence on the amounts the appellees spend on necessary travel. The state parties and appellees stipulated only that appellee Hein's "training plan * * * provided * * * for a monthly Work and Training allowance for necessary commuting under said plan in the maximum allowable flat amount of $44" (App. 24). This may indicate that appellee Hein expended at least $44 each month on commuting, or it may reflect a legal misunderstanding, *i.e.*, that the training allowance was merely a transportation allowance, and say nothing about the amounts appellee Hein actually spent on travel. That the latter is the case is suggested by the fact that the appellee class was defined broadly as "all persons receiving *transportation allowances* * * *" (App. 32, n. 1; emphasis added).

[3]The district court's order could be read as speaking only to the narrow question of the treatment of the portion of training allowances actually expended for travel. The court enjoined the Secretary from "including in the monthly net income of any person * * * any amount received * * * as reimbursement for necessary commuting expenses * * *" (J.S. App. B, p. 25a). We have read that order in the context of this

If this is indeed appellees' position, *i.e.*, that the Secretary is required to exclude only that portion of the training allowance that the recipient uses for travel, they necessarily have conceded the propriety of including the training allowances in their incomes in the first instance (see our opening brief at 19-25), for the case reduces to the question whether the Secretary, after properly including training allowances in income, must allow a deduction for actual educational or training transportation expenses.

We address the latter question generally at pages 25-32 of our opening brief. In summary, we show that the Secretary appropriately has disallowed deductions for most nonfood expenses because the statutory eligibility criterion is "income," not "residuary food purchasing power" (at 26-28); that the disallowance of commutation expenses is particularly appropriate in view of the extent to which such expenses may reflect personal choice (at 28-30); and that the disallowance of such expenses is not arbitrary or contrary to a congressional intention to encourage education (at 30-32).[4]

---

case as requiring exclusion of training allowances generally, under the theory that the court had simply mistook those allowances for travel allowances. A different reading is possible, however: it may be that the court intended only to order the Secretary to provide an exclusion or deduction on account of transportation expenses actually incurred by individuals who receive training allowances, and for that reason used the term "reimbursement" even though individuals receiving an allowance pursuant to a full-time training plan are not required to provide an accounting of expenses.

[4]The last sentence on page 30 of our opening brief contains a printing error. The word "appropriate" in that sentence should be "inappropriate," so that the sentence should read:

> Thus, it is not inappropriate to allow an itemized deduction for tuition to those households incurring such expense, while affording to all households only a standard deduction to cover incidental expenses.

Appellees apparently take serious issue only with the last of these three propositions. They do not suggest that nonfood expenses generally, or even all commuting expenses, should be deductible. Their principal contention is that education and training commuting costs are special and that their disallowance "works at cross-purposes with Title XX of the Social Security Act * * *" (Br. 20; see generally Br. 17-22).

This is not, of course, an argument that the Secretary's regulations are inconsistent with the authorizing statute. Nothing in the Food Stamp Act requires special treatment of the incidental expenses of education, and we have shown in our opening brief that disallowance of such expenses, like the disallowance of many other expenses that may serve a worthwhile purpose, both is consistent with the purpose of the Act to allocate benefits on the basis of "income" and serves the ends of efficient administration.

Moreover, appellees point to nothing in the legislative history or language of Title XX of the Social Security Act that suggests Congress wanted the Secretary to amend the food stamp program to exclude from recipients' income all or some special part of the grants they received through Title XX programs. Congress' silence on this point is eloquent as to its intent. Congress has exempted certain kinds of public assistance from inclusion in income for purposes of determining food stamp benefits. See 7 C.F.R. 271.3 (c)(1)(ii). Congress also has provided that benefits received under the Food Stamp Act shall not be used to decrease other "welfare grants or other similar aid." 7 U.S.C. 2019 (d). But Congress made no similar provision with respect to the treatment of the training allowances received by appellees. If Congress had intended the Secretary to make special provision with respect to such training allowances, it would have made its intention explicit.

At bottom, therefore, appellees' argument is little more than an expression of what they regard to be sound social policy, joined to a plea that this Court legislate that policy now that Congress has failed to do so. But they make no convincing showing of any principled basis for such a judicial intrusion into the realm of welfare policy.[5]

For the reasons stated here and in our opening brief, the judgment of the district court should be reversed.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1976.

---

[5]Appellees do assert that the Secretary's disallowance of education and training transportation expenses is unconstitutional (Br. 30-35), but their discussion of that point necessarily is little more than reiteration of their disagreement with the Secretary's decision on the level of policy. Those constitutional arguments are anticipated at pages 32-38 of our opening brief.

(There is a printing error in our discussion of the constitutional question. The second line of the first full paragraph on page 35 is out of place. The first sentence of that paragraph should read: "Nor should the Secretary be required to allow an itemized deduction for all commutation expenses, merely in order to achieve maximum parity between all households insofar as the treatment of that narrow class of expenses is concerned.")

DOJ-1976-11

FOR ARGUMENT

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1261

EARL L. BUTZ, SECRETARY OF AGRICULTURE,
Appellant

vs.

KAREN HEIN, et al.,
Appellees

No. 75-1355

KEVIN BURNS, COMMISSIONER, Iowa State Department Social Services,
Appellant

vs.

KAREN HEIN, et al.,
Appellees

On Appeal From The United States District Court for the Southern District of Iowa

Brief Amici Curiae in Support of Appellees

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MISCELLANEOUS

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On Appeal From The United States District Court for the Southern District of Iowa

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Sandra Chek
Food Law Center Of California Rural Legal Assistance
Food Research And Action Center

STATEMENT OF INTEREST OF AMICI

This Brief Amici Curiae is filed without motion, as is permitted by Rule 42 of the Court, the prior consent of the parties have been obtained and sent under separate cover to the Clerk of the Court.

Amicus Sandra Jenay Chek is a plaintiff in analogous litigation against appellant Secretary of Agriculture. *Chek*

v. Butz, ... F.Supp. .... (N.D. Calif. No. C-75-0559-CBR, June 4, 1975 and March 9, 1976), Ninth Cir. No. 75-2843. Because this Court's disposition of the present cause will directly affect the outcome of her appeal, amicus Chek has set forth her case in this brief amici curiae.

Amicus Food Law Center of California Rural Legal Assistance and amicus Food Research and Action Center are each public interest law firms that regularly litigate matters relating to the food and nutritional problems of low-income Americans. The Food Law Center was counsel for amicus Chek before the district court and continues in that capacity.

Because the present cause involves a construction of the Food Stamp Act of 1964, as amended, which may affect the access to adequate nutrition for both amicus Food Law Center and amicus Food Research and Action Center's clients, amici submit the following brief.

ARGUMENT

Introduction and Summary of Argument

Amici will address the significant issues of national nutrition and education policy which underlie this case as well as the specifically germane questions of statutory construction. Exclusive of the constitutional questions broached herein, which we will not address, Amici do urge this Court to reach the following questions:

(1) Whether the Food Stamp Act gives authority to the defendant-appellant Secretary of Agriculture to define as "income" Social Security Act education assistance entitlements which are expressly for non-subsistence purposes.

(2) Wholly independent of that query, whether the regulation at issue was promulgated in accordance

with the requirements of the Administrative Procedure Act.

In order to understand the meaning of the term "income" as it is used in the Food Stamp Act, Amici argue that it is necessary for the Court to look into the legislative development of the educational and removal-of-dependency mandate of enactments paralleling the Food Stamp Act. These enactments were the product of an evolving Congressional awareness of the positive impact of enhanced educational opportunities in the reduction of poverty and dependence. Hence, part I and part II are a necessary prelude to part III which addresses the crux of this case, the meaning of "income" under the Food Stamp Act of 1964, as amended.

Specifically, in both the case of appellee Hein and the case of amicus Chek supplemental special welfare benefits were obtained to meet the extra expense of the non-subsistence pursuit of higher education. Each had practical vocational goals in mind and the federal programs that afforded them the opportunity to escape the poverty cycle were grounded in the Congressional recognition that supplemental resources were a *sine que non* to their undertaking such educational opportunities.

"Income" has been given a sensible meaning by the U.S. Department of Health, Education, and Welfare and this Court in the context of the subsistence Aid to Families with Dependent Children program under Title IV-A of the Social Security Act of 1935, as amended.

The continuity of legislative purposes of federal education assistance, income security, and adequate nutrition guarantee laws is an integral element to the context of the term "income" and its construction as a "current

availability" concept under the Food Stamp Act of 1964, as amended.

In part IV, Amici discuss the procedural genesis of the USDA regulation here under challenge and show that the three step public comment objectives of 5 U.S.C. § 553 were totally subverted by the actual course of appellent Secretary Butz's rulemaking.

1. The Role of Education and Income Maintenance Programs in Fostering Escape from the Poverty Cycle.

One of the traditional roles of American education has been to broaden opportunities for productive, influential, and rewarding participation in the affairs of society by developing those skills and entry credentials necessary for economic survival and social satisfaction.

The idea of education for all grew gradually.[1] In this country we have extended the opportunity of education to more and more of our citizenry, by a steady increase in the quantity and quality of the educational experiences available (including supportive services). As the quality of the education experiences and supportive services have grown, there has also been a marked increase in the quality of skills and competencies demanded in the job market. Thus, demographic studies beginning in the late 1950's found a new configuration to American poverty attributable to undereducation and training and not to social, psycho-

1. Certainly one of the earliest and most notable American advocates of universal educational opportunity was Thomas Jefferson. In his *Notes on Virginia* (1784), he urged enactment of a law which would

> "provide [for] an education adapted to the years, to the capacity, and the condition of every one, and directed to their freedom and happiness."

A. Koch and W. Peden, editors, *The Life and Selected Writings of Thomas Jefferson*, pp. 187-292, at 263 (Modern Library Edition, 1944).

logical, or physical factors. It has been observed that the main characteristic shared by contemporary applicants for public assistance was a low level of education and training and that automation is a key factor in the loss of the last job held.[2] These changes and causes have been found to be continuing in even the most current literature.[3]

The federal government has undertaken a major role in fostering the accessibility and quality of educational opportunity.[4] That undertaking has been embodied in a number of approaches providing federal subsidies to institutions as well as to individuals and would seem to be an economically well-founded policy because education has been credited for

2. R. M. Hilliard, "New Techniques in the Rehabilitation of Welfare Dependents", in M. S. Gordon, editor, *Poverty in America*, 267-277 (Chandler, 1965). See also M. B. Folsom, "Measures to Reduce Poverty", *Ibid.* 62, 65.

3. The Council of Economic Advisors made an extensive study of unemployment in their Annual Report to the President in 1975. *Economic Report of the President—Transmitted to the Congress February 1975*, 86-127 (GPO, 1975). They concluded at p. 109 that:

> "[a] pronounced inverse relation exists between education and unemployment."

In their 1976 Annual Report, they found that:

> "[t]he increase in the unemployment rate was largely a consequence of unemployment arising from the loss of a job, particularly among adult men and women."

Economic Report of the President—Transmitted to the Congress January 1976, 80 (GPO, 1976).

4. Legislative developments on the education front in addition to the 1956, 1968 and 1974 amendments to the Social Security Act and the Higher Education Act of 1965 discussed in this brief *infra*, pp. 3, 5 include the Higher Education Facilities Act of 1963 (P.L. 88-204, 77 Stat. 363) which provided federal grants and loans for college construction. In 1966, when the largest appropriations and expenditures were made, $67 million was spent on construction and $200 million on loans. To further meet the subsistence needs of needy students, the Higher Education Act of 1965 (P.L. 89-329, 79 Stat. 1219) included a work study program providing a federally subsidized part-time jobs program.

about one-fifth the growth of the U.S. economy from 1929 to 1957.[5]

The social services mandate of the Social Security Act of 1935[6], the Food Stamp Act of 1964[7], and the Higher Education Act of 1965 student assistance provisions[8] share the characteristic of being indirect legislative action to ameliorate if not eradicate American poverty. Thus they are of a piece, from the Workers Progress Administration (WPA) to Comprehensive Employment and Training Act (CETA) programs which the Congress has created to make the poor more employable, to find them jobs, and even to employ them publicly.

The Jeffersonian conception of education as the key to American social integration and mobility has been reinforced since World War II by the theorists of human capital who showed that individual and societal investments in education yielded ample economic and social re-

5. E. F. Denison, *The Sources of Growth in the United States and Alternatives Before Us* (N.Y. 1962). See also W. Lee Hansen, "Rates of Return to Investment in Schooling in the United States" in M. Blaug, editor, *Economics of Education 1,* 137 (Penguin, 1968) and B. A. Weisbrod, "Education and Investment in Human Capital" in D. Levine and M. Bane, editors, *The "Inequality" Controversy: Schooling and Distributive Justice,* 132 (Basic Books, 1975).

6. 74th Cong., c. 531 (Aug. 14, 1935 § 401, 49 Stat. 627, amended in 1956, 84th Cong. c. 836 (Aug. 1, 1956), Title III, 70 Stat. 848; in 1968, P.L. 90-248 (Jan. 2, 1968) Title II, 81 Stat. 877 *et seq.;* and in 1975, P.L. 93-647 (Jan. 4, 1975) § 2, 88 Stat. 2337.

7. P.L. 88-525, August 31, 1964, 78 Stat. 703, codified at 7 U.S.C. §§ 2011 *et seq.*, amended in 1971, P.L. 91-671 (Jan. 11, 1971), 84 Stat. 2048, again in 1973, P.L. 98-86 (Aug. 10, 1973), 87 Stat. 221, twice again in 1974, P.L 93-335 (July 8, 1974), 88 Stat. 391; P.L. 98-347 (July 12, 1974), 88 Stat. 340, once in 1975, P.L. 94-4 (Feb. 20, 1975), 89 Stat. 6, and once in 1976, P.L. 94-339 (July 5, 1976), 90 Stat. 799.

8. P.L. 89-329 (Nov. 8, 1965), 79 Stat. 1219, 1232, codified at 20 U.S.C. § 1070 *et seq.*, amended in 1972, P.L. 92-318 (June 23, 1972) Titles I, II, 86 Stat. 247, 381.

turns.[9] Those returns have been analyzed in both their direct[10] and indirect aspects[11] and have been found both positive and substantial.[12]

9. M. Blaug has edited a thorough two-volume anthology, *Economics of Education* (Penguin, 1968); "Symposium on Rates of Return to Investment in Education", II *The Journal of Human Resources—Education, Manpower, and Welfare Policies,* no. 3 (1967) 291-374; J. E. Meade, *Efficiency, Equality and The Ownership of Property,* 30-32 (Harvard Univ. Press, 1965); G. Becker, *Human Capital* (Columbia Univ. Press, 1964).

10. W. Lee Hansen, "Rates of Return in Investment in Schooling in the United States", *supra,* footnote 5, in his cost-benefit analysis finds a rate of return of never less than 10% for each year of college. See J. Mincer, "Youth, Education, and Work", in *The "Inequality" Controversy,* supra, footnote 5, 185-194.

11. M. Blaug in his own contribution to his edited anthology *Economics of Education,* supra, footnote 6, "The Rate of Return on Investment in Education" at 243 has at least partially catalogued the indirect benefits of education as:

> "(1) the current spillover income gains to persons other than those who have received extra education; (2) the spillover income gains to subsequent generations from a better educated present generation; (3) the supply of a convenient mechanism for discovering and cultivating potential talents; (4) the means of assuring occupational flexibility of the labour force and, thus, to furnish the skilled manpower requirements of a growing economy; (5) the provision of an environment that stimulates research in science and technology; (6) the tendency to encourage lawful behavior and to promote voluntary responsibility for welfare activities, both of which reduce the demand on social services; (7) the tendency to foster political stability by developing an informed electorate and competent political leadership; (8) the supply of a certain measure of 'social control' by the transmission of a common cultural heritage; and (9) the enhancement of the enjoyment of leisure by widening the intellectual horizons of both the educated and the uneducated."

12. The domain of economic returns from investment in academically a somewhat controverted field, (compare C. Jencks et al., *Inequality: A Reassessment of the Effect of Family and Schooling in America,* [Basic Books 1972]; *"Perspectives on Inequality: A Reassessment of the Effect of Family and Schooling in America",* 43 *Harv. Ed. Rev.* 37-164 [1973]; D. M. Levine and M. J. Bane, editors, *The "Inequality" Controversy: Schooling and Distributive*

Recently the Bureau of Labor Statistics has published a survey of American women as heads of households, their employment opportunities and their earnings potential.[13] Between 1940 and 1975, the number of female-headed households doubled. From just 1970 to 1974, the number of poor female-headed households rose 21 percent, while male-headed households declined by 17 percent. Since 1970, the overall unemployment rate experienced by such women has been a consistent 3 to 4 percentage points ahead of the rate for men. Perhaps most pertinent to the facts of this case, the occupation and hence earnings of these working women directly reflected their level of education and training. Hence,

> "[t]hose who had never married were considerably younger and thus had more formal schooling than other women headed families. White single heads were more likely to hold professional-technical jobs than divorced, separated, and widowed white women. Black single heads were more likely to hold clerical jobs than other black women headed families."[14]

Justice, supra, footnote 5, although the Congressional record of commitment is clearly without equivocation. By a veto override in 1975, Congress enacted P.L. 94-94, 89 Stat. 468 which appropriated $2,439,309,000 for higher education in fiscal year (FY) 76, of which $240,093,000 was for supplemental opportunity grants such as that which was awarded to amicus Chek. 89 Stat. 469-470. This represents an increase of $306,238,000 over the amount appropriated for FY 75. And again, on September 30, 1976, also by a veto override, Congress passed P.L. 94-439 (H.R. 14232), the appropriation legislation for FY 77. The amount for Title IV (student assistance) being $352,670,000.

Analogously in the case of social services financing, the Social Security Act removal of dependency mandate which began in 1956, had been increased by FY 1974 to a $2.5 billion authorization.

13. B. M. McEaddy, "Women Who Head Families: A Socio-economic Analysis", 99 *Monthly Labor Rev.,* no. 6, 3-9 (June, 1976).

14. *Ibid* at 6.

The facts herein speak poignantly to the lack of wisdom which underlies USDA's income policy. Today appellee Hein is a registered nurse who no longer must rely upon AFDC to support herself and her family as relief afforded by the court below permitted her to complete her education without the Hobson's choice between adequate food and an escape from the poverty cycle that has stymied amicus Sandra Chek and leaves her and her sons dependent even today on societal largesse.

While plaintiff-appellee Karen Hein and amicus curiae Sandra Chek are female-heads of households and while their potential rate(s) of return as a nurse and an accountant respectively may be less than males could anticipate in the same occupations[15], the latest U.S. Department of Labor data[16] shows a marginal dollar value for their increased educational attainment for four years of college of $1,451 per year.[17]

The societal assurance of access to a nutritionally adequate diet for needy Americans has been more recently

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15. On the basis of a refined study of monthly starting salaries, amicus Chek's choice of accounting would appear propitious as the monthly differential for June, 1975 was only $4.00 ($986 for women and $990 for men). F. S. Endicott, "Trends in Employment of College and University Graduates in Business and Industry, 1975", *29th Annual Report, Northwestern University* (1974).

16. Women's Bureau, Employment Standards Administration, U.S. Department of Labor, "The Earnings Gap Between Women and Men", Table 5 "Comparision of Median Income of Year-Round Full-Time Workers, by Educational Attainment and Sex, 1974" at 10.

17. Even using 1960 data, appellee Hein, who is 31, and a divorcee, has an expectancy of approximately 33.6 years in the labor force and thus her cumulative economic benefit would be of the order of $48,756.00. Similarly, amicus Chek, who is 35 and a divorcee, has an expectancy of 28.8 years in the labor force and thus her cumulative economic benefit would be of the order of $41,788.00. S. M. Speiser, *Recovery for Wrongful Death, Economic Handbook,* (Bancroft-Whitney, 1970) 179, Table 72.

established as an American value[18] than has that of educational opportunity. As the scope of the opportunity to be self-sufficient in food production has narrowed, the breadth of the government's subsidy of food production and the delivery of food or the means for access to same, have expanded.[19] Just as the Congress has developed a multifarious catalog of direct and indirect education incentive, subsidy, and assistance programs, a parallel collection of direct and in-kind food assistance programs have arisen for the young, the elderly, and needy families.[20]

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18. For example, the National School Lunch Act of June 4, 1946, c. 281, 60 Stat. 230 which makes it Congressional policy to provide for an adequate supply of food for a nationwide network of non-profit school lunch programs. 42 U.S.C. § 1752. See § 2 of the Food Stamp Act of 1964 as amended (7 U.S.C. § 2011) and the recent House and Senate Resolutions regarding the "right-to-food". H.R. Con. Res. 737, 122 Cong. Rec. H 10715 (daily edition, September 21, 1976) and S. Con. Res. 138, 122 Cong. Rec. S 15124, S 15928 (daily edition, September 1 and 16, 1976) Cf. "The Right-to-Food Resolution", Hearings before the Subcommittee on International Resources, Food and Energy of the House Committee on International Relations, 94th Cong., 2nd Session (June 1976); Senate Report No. 94-1316.

19. In the case of the food stamp program, the record of Congress's developing awareness of nutritional risk among low-income American households and their legislative efforts to maximize participation by eligible households as well as their expanding fiscal commitment to the goal of guaranteeing for all access to the means to purchase a nutritionally adequate diet are well essayed in *Bennett v. Butz*, 386 F.Supp. 1063-65 (D. Minn. 1974) and *Rodway v. USDA*, 514 F.2d 809, 818-24 (D.C. Cir. 1975). Similarly in the case of the congregate elderly feeding program under Title VII of the Older American Act of 1965 as amended see *Kennedy v. Mathews*, 413 F.Supp. 1240, 1241-42 (D.D.C. 1976).

20. The latter reflect Congressional recognition of the fundamental importance of access to food. The role of the food stamp program has been all the more vital as the one American social welfare program keyed to make twice a year benefit adjustments to reflect rises in the cost of food. 7 U.S.C. § 2016(a). Professor Joseph Powell of the University of Wisconsin has graphically testified to the bitter impact of the recent food price upward spiral.

> "[T]he disproportionately large share of food expenses in the budgets of poor people has caused the poor person's price index to advance faster than the regular consumer price index. The result is a disastrous decrease in the purchasing power of the poor. It also means that the poor have suffered far more grievously from the recent inflationary spiral than have the affluent and the middle class.
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> "... Several alternative results will occur due to this extraordinary inflationary price squeeze on the poor. *If a poor family pays for non-food necessities first*, then the family will either be unable to purchase the same (already meager) diet that it obtained previously, or it will have to experience a substantial negative asset movement (i.e., the sale of assets or increased debt) in order to obtain its previous food quotient. *If a poor family pays for food necessities first*, then the family will be unable to pay for such crucial necessities as utilities, medical expenses, clothing and/or other items; in the alternative, in order to subsidize these other necessities, the family will experience a significant negative asset movement. In sum, the current inflationary food spiral has been most destructive to poor people's already vulnerable economic and nutritional status.
>
> "... Finally, in addition to the general across-the-board price increases in food, the poor experienced severe food price increases. This occurred because of the following: Although the elasticity of food demand is relatively low in comparison with other budget items, there nevertheless is *some* elasticity with most food items. All consumers tend to alter the composition of their food purchases in response to price increases. People tend to reduce both the quantity and the quality of food purchases as prices increase. Thus, each income class, in attempting to maintain its food budget within its income capabilities, will try to shift to lower-cost, lower-quality foods in order to compensate for increased food costs. For the poor, however, who already are consuming generally the lowest cost and lowest quality food items, there is virtually no flexibility to switch to lower cost food items. Thus, they are unable to cushion the food price increases by switching to cheaper food items, the demand for such cheaper items increases and such food items tend to become further price-inflated.
>
> "Evidence of this price increase differential is readily available. For example, poultry went up 144 percent (relative to its 1967 level) while beef went up only 75 percent; hamburgers increased by 89 percent while sirloins increased by only 60 percent. Although the price of poultry has come to occupy a larger proportion of the protein input of the poor because it still was the cheapest source of meat protein. As a result, for many poor people the increases in prices were so

This case revolves around their auspicious intersection in the context of heads of needy American households who

desire to escape the poverty cycle through education and training.[21]

II. The Removal-of-Dependency Mandate of the Social Security Act Precludes the Secretary of Agriculture from Treating Non-Subsistence Entitlements as Income.

Underlying the many federal education and training programs—and especially the removal-of-dependency mandate of Section 2001 of the Social Security Act of 1935, as amended — is the elementary notion that such programs

high that they actually had to consume less of all products, particularly those vital to good health and productivity: protein products, dairy products, and some vegetables."
(Emphasis in the original; footnotes omitted.)

National Nutrition Policy Hearings, Part 3, "Nutrition for Special Groups" before the U.S. Senate, Select Committee on Nutrition and Human Needs, 93rd Cong. 2nd Sess. at 849, 852-854 (1974).

Since just June, 1974, when those Senate hearings were held, USDA's retail food price index for food purchased for home consumption has increased an additional 12.4 percent. U.S. Department of Agriculture, *National Food Situation* (NFS-157), Table 10 "Retail Food Price Indexes and Consumer Price Index, selected periods", at 29 (September, 1976).

21. Yet there should be no misapprehension of the facts as to the magnitude of the college student population participating in the food stamp program. Neither appellant Hein nor amicus Chek are representative of any middle class segment of the food stamp program. Much to the contrary they are truly needy heads of households whose attempts to better themselves and the lot of their children have been frustrated by USDA's overbroad motion of what may be treated as "income" under the Food Stamp Act.

Most recently the staff of the U.S. Senate Select Committee on Nutrition and Human Needs reviewed the entire corpus of Bureau of Census, Department of Agriculture, and U.S. House of Representatives, Committee on Agriculture data on college students participating in the program and prepared a summary entitled "Food Stamp Program Profile, Parts 1 and 2", stating in pertinent part:

> "[USDA's study—'Characteristics of Food Stamp Households, September, 1975'—] found that only 1.3 percent of the food stamp caseload were students at institutions of postsecondary education in September, 1975. The number of student food stamp recipients, according to the USDA study, is 202,000. The House [Agriculture Committee] study also contains information on this matter; the study found that 204,700 students in non-welfare households participated in the program in April, 1975. (Most student food stamp participants do live in non-public assistance households consisting largely of welfare mothers and their children.)
>
> "The House study also found that many student food stamp recipients work as well as attend school. Over half of all student-headed households have earned income."
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> "Food Stamp Program Profile, Parts 1 and 2", Committee Print, 94th Cong. 2nd Sess. (August, 1976) at p. 7.

Thus appellee Karen Hein and amicus curiae Sandra Jenay Chek are perhaps atypical student food stamp program participant households as they are both welfare mothers caring for dependent children. At the same time they are the archetypal beneficiaries (along with society at large) of the federal education assistance programs which focus upon making available the economic and social benefits of higher education to qualified students.

22. For example §§ 101 and 401 of the Higher Education Act of 1965 (P.L. 89-329, 79 Stat. 1219 and 1232) provide in pertinent part:

> "For the purpose of assisting the people of the United States in the solution of community problems such as housing, *poverty*, government, recreation, employment, youth opportunities, transportation, health, and land use by enabling the Commissioner [of Education, U.S. Department of Health, Education, and Welfare] to make grants to strengthen community service programs [i.e., educational program, activity, or service, 20 U.S.C. § 1002] of colleges and universities. . . ." (Emphasis added) 20 U.S.C. § 1001.

The section goes on to authorize the appropriation of $10 million for fiscal year 1972 and $10 million per year in increasing progressions.

> "It is the purpose of this part, to assist in making available the benefits of postsecondary education to qualified students in institutions of higher education by—
>
> "(1) providing basic education opportunity grants (hereinafter referred to as "basic grants") to all eligible students;
>
> "(2) *providing supplemental education opportunity grants* (hereinafter referred to as "supplemental grants") *to those students of exceptional need who, for lack of such*

will benefit society at large by allowing individual beneficiaries to become more productive members of society.[22] A corollary to this concept with particular applicability in the field of federal income maintenance programs is that investment in the education and training of public assist-

ance recipients — who would be largely unable to pay for such services on their own — provides an otherwise unavailable means for those persons to increase their earning power and thus to break out of the poverty cycle of underemployment, unemployment, family break-up, and welfare dependence.[23]

Recognizing after a course of time that subsidies to both rich and poor institutions of higher learning did not fully ensure access for the truly needy, the Congress in the

a grant, would be unable to obtain the benefits of a post-secondary education;

"(3) providing for payments to the States to assist them in making financial aid available to such students;

"(4) providing for special programs and projects designed (A) to identify and encourage qualified youths with financial or cultural need with a potential for postsecondary education, (B) *to prepare students from low-income families* for postsecondary education, and (C) to provide remedial (including remedial language study and other services to students; and

"(5) providing assistance to institutions of higher education."

(Emphasis added) 20 U.S.C. § 1070.

23. For example the Social Security Act Amendments of 1967, P.L. 90-248, § 204, 81 Stat. 821, 887 created a Work Incentive Program (WIN) in order to restore:

"families [with dependent children] to independence and useful roles in their communities. It is expected that the individuals participating in the [WIN] program. . . . will acquire a sense of dignity, self-worth, and confidence which will flow from being recognized as a wage-earning member of society and that the example of a working adult in these families will have beneficial effects on the children in such families."

42 U.S.C. § 630.

See also the Comprehensive Employment and Training Act of 1973 (CETA) as amended, P.L. 93-203, § 2, 87 Stat. 839 creating an assortment of public service job opportunity and training programs wherein Congress' enunciated purpose includes the provision of:

"job training and employment opportunities for economically disadvantaged, unemployed and underemployed persons, and to assure that training and other services lead to maximum employment opportunities and enhance self-sufficiency. . . ."

29 U.S.C. § 801.

1950's embarked upon the strategy of loans and subsidies directly to needy students as an essential predicate to their equality of educational opportunity. While those educational assistance programs are quite varied in the scope and manner of their aid, appellee Hein and amicus Chek present this Court with the narrow issue of educational assistance which is exclusively available for non-subsistence purposes, in short, tuition, fees, books, and transportation to and from school.

The factual circumstances of appellee Hein are unambiguously set out in the record and accurately portrayed in Appellee's brief.[24] She is a divorced mother of two minor children. At all times pertinent to this action she and her children received cash assistance entitlements under the joint state and federal Aid to Families for Dependent Children (AFDC) program and have participated in the federal food stamp program. Title IV-A of the Social Security Act, 42 U.S.C. §§601 *et seq.*

Desiring to become self-supporting, Karen Hein has additionally sought out and participated in a social services Individual Education and Training Plan under which she has studied at St. Luke's School of Nursing in Davenport, Iowa, to become a registered nurse. Because appellee is a resident of Muscatine, Iowa, and because there is no comparable school in Muscatine, appellee has received a grant of $44.00 per month for daily automobile transportation between Muscatine and Davenport.[25] The entirety of that grant has been spent for travel.

That $44.00 monthly grant was a product of the Social Services program component of Iowa's state plan under

24. See generally Joint Appendix, Nos. 75-1261 and 75-1355, Stipulation One, Two, and Three, at 23-30.

25. It is approximately 25 miles in driving distance between Davenport and Muscatine, Iowa.

§402 of the Social Security Act of 1935 as amended[26] — all of which was spent on commuting expenses and none of which was available to appellee or her children for food purchases — was included as additional income in computing the purchase price that she was required to pay for her household's monthly food stamp coupon allotment; at the same time, the grant was specifically excluded from the catalog of allowable income deductions. Without the educational travel allowance, appellee had to pay $46.00 per month in order to obtain $94.00 worth of food stamps; however, with the education travel grant treated as income available for food-purchasing, she was required to pay $58.00 per month for the same $94.00 coupon allotment — a $12.00 monthly increase in her purchase price.

Similarly, amicus Sandra Chek is a divorced mother with two sons, Gary, age 14, and Christopher, age 5, who at the time of litigation, lived in Novato, California. Like the Hein household, the Chek family's primary means of subsistence had been from AFDC entitlements and food stamps. The Chek household had income of $27.00 per month from property owned in Milpitas, California, but this reduced the family's AFDC grant, dollar for dollar.

Their three-person food stamp monthly coupon allotment — $122.00 at the time their litigation was commenced in March, 1975 — made the critical difference in assuring minimally adequate nutrition for the Chek household. They spent their meager resources on only the bare necessities, substituting baking soda and shoes from private charities for such conventional items as toothpaste and new shoes.

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26. As is correctly pointed out by the Solicitor Bork in his Brief for Appellant Secretary Butz at 6, footnote 6.

> "Programs of this nature are currently authorized by Title XX of the Social Security Act, 42 U.S.C. (Supp. IV) [§§] 1397 *et seq.*"

In order to become self-supporting amicus Chek sought out and participated in federal Higher Education student assistance and California Educational Opportunity Program (EOP) grants which permitted her to complete one year of study in accounting under the College Re-entry for Women (CREW) program at the Indian River Junior College in Novato, California.

After starting school and experiencing both a rent increase and a food stamp purchase price increase, the Chek household had the following monthly expenses:

Rent	$175.00
Utilities	40.00
Food Stamp Purchase Price	64.00
Gas for school	26.00
Gas and insurance other than for school	18.00
Household, personal and miscellaneous expenses	15.00
School books and supplies	17.57
Child care to permit Ms. Chek to take an evening course	18.00
	$373.57

Household income was as follows:

AFDC grant	$235.00
Rent from Milpitas house after mortgage payment	27.00
Educational grants	60.00
	$322.00

Thus there was a monthly deficit of $51.57[27], which was met through personal loans and which, if her grants were excluded, for food stamp purposes, from consideration as

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27. Refer back to Professor Powell's pungent economic analysis of this "negative asset movement" footnote 20 *supra*.

income or if school books, supplies, and transportation were allowed as a deduction, would leave her economic situation tenuous but no longer impossible.

Ms. Chek was not required to pay tuition, and the college staff determined that she would incur school related expenses of $162 for school books and supplies, $260 for transportation and $180 for child care during the ten month school year. To meet these needs the college provided her with two education grants, one federal[28] and one state, each

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28. Under Title IV, § 413A of the Higher Education Act of 1965 as amended, Supplemental Education Opportunity Grants (SEOG) are made available to students such as amicus Chek "to assist in making the benefits of post-secondary education [to those] who, for lack of financial means, would be unable to obtain such benefits without such grants." 20 U.S.C. §§ 1070b *et seq.* As the Senate said in its report (No. 673) in pertinent part:

> "The pressing requirement for fresh, vigorous congressional action in the general field of student financial assistance cannot be emphasized too strongly. Information delineating the continuing upward spiral of the cost of education beyond the high school, the rapidly mounting size of high school graduating classes—beginning with the record-setting number of graduates in the June 1967 class—and the *aggravated plight of students who do not have the means to acquire education, demonstrates in clear terms the extent and depth of the problem.*
>
> "Surrounding the question of how best to increase the supply of trained manpower—at all levels—is the continuing shortage of trained, educated persons in many areas. Despite the creation of new programs for the support of highly trained persons in a number of specialized areas, the booming technological development of our economy is creating present and future shortage of competent, well-trained professional and technical personnel. Such shortages constitute a serious threat to continued technical and scientific progress, to military strength, to every area of research and development, to education itself, and to the highly important health and welfare programs advanced by this Congress."
>
> (Emphasis added) 3 U.S. Code Congressional and Administrative News, 89th Congress, 1st Session (1965) at 4053.

As is the case with each of the education assistance programs under Title IV of the Higher Education Act, amicus Chek was required

in the amount of $300 and together just enough to cover her education-related needs.

Ms. Chek was pursuing an Associate of Arts degree in accounting and had an outstanding academic record. When, in conformance with USDA policy, the California Department of Benefit Payments upheld Marin County's determination that her education grants were "income" for the purposes of the food stamp program and that her expenditures for school books, school supplies, and transportation were not permissible deductions, the Chek household was confronted with a Hobson's choice. Either Ms. Chek would have to drop out of school or drop out of the food stamp program because of the prohibitive food stamp purchase price. The former course would totally frustrate her strenuous efforts to fight her way out of the poverty-and-welfare cycle. The latter, would guarantee wholly inadequate food purchasing power and nutrition for Ms. Chek and her sons. During the pendency of the district court proceedings, the Chek household was able to continue participation in the food stamp program only by not paying bills, such as for utilities, and by going into debt to friends.

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to and did sign an affidavit as is required by § 498 of the Act which provides in pertinent part:

> "Notwithstanding any other provision of law, no grant, loan or loan guarantee authorized under this subchapter may be made unless the student to whom the grant, loan, or loan guarantee is made has filed with the institution of higher education which he intends to attend, or is attending (or in the case of a loan or loan guarantee with the lender), an affidavit stating that the money attributable to such grant, loan, or loan guarantee will be used solely for expenses related to attendance or continued attendance at such institution."
>
> 20 U.S.C. § 1088g.

The school year ended on June 13, 1976, as did the two educational grants, so that the household's food stamp purchase price substantially declined. Because of the district court's adverse ruling on June 4, 1975[29], Ms. Chek was financially unable to return to school for the 1975-76 academic year as well as this fall. Again, without the educational grants, she could not afford to attend; with them, she could not afford to participate in the food stamp program. Because of USDA's procrustean "income" policies, the Chek household has been forced to forego the opportunity to become self-sufficient in order to continue to benefit from the increased food purchasing power afforded by their $85.00 per month food stamp bonus.

Appellee Hein was a Congressionally-intended beneficiary of the removal-of-dependency mandate of the Social Security Act. That mandate had its genesis in the 1956 amendments to the Act (P.L. 880, August 1, 1956, 70 Stat. 807, 848) which amended the purposes of Title IV-A to authorize the states to provide services:

> "to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and *to help such parents or relatives to attain or retain capability for the maximum self support* and personal independence consistent with the maintenance of continuing parental care and protection." (Emphasis added)
> 42 U.S.C. §601.

The legislative history of the 1956 amendments makes it abundantly clear that this restatement of purpose reflects a deliberate Congressional plan to help AFDC recipients

29. *Chek v. Butz et al.*, ___ F.Supp. ___ (N.D. Calif. No. C-75-0559-CBR, Memorandum of Opinion and Order of June 4, 1975, and Summary Judgment of March 9, 1976), appeal docketed Ninth Circuit No. 75-2843.

break out of the poverty cycle. As Senate Report No. 2133, June 5, 1956 states in pertinent part:

> "Services that assist families to attain the maximum economic personal independence of which they are capable provide a more satisfactory way of living for the recipients affected. To the extent that they can remove or ameliorate the causes of dependency, they will decrease the time that assistance is needed and the amounts needed. For these reasons the availability of such services to families and individuals is a part of the effective administration of the public assistance programs and therefore a proper administrative expenditure by States in which the Federal Government shares."
>
> 3 *U.S. Code Congressional and Administrative News*, 84th Cong., 2nd Sess. (1956) at 3906.

The removal-of-dependency mandate added to §401 of the Act in 1956 has never been derogated from.[30] In fact, the 1968 amendment to the Social Security Act added similar language of purpose to §402(a) of the Act generally setting forth the criteria which the Secretary of HEW was to consider in passing upon the acceptability of state assistance plans submitted pursuant to Title IV-A.[31]

Although §402(A)(14) was repealed by the Social Security Amendments of 1974 (P.L. 93-647, 88 Stat. 2346), both

30. Not the least of the indicia of which has been the fiscal commitment reflected in Congressional appropriations which have steadily increased. See footnote 15, *supra*.

31. Providing in pertinent part:
"(14) provide for the development . . . . of a program for such family services . . . . as may be necessary in light of the particular home conditions and other need of such child, relative, and individual, in order to assist such child, relative, and individual to attain or retain capability for self-support and care and in order to maintain and strengthen family life and to foster child development."
(Emphasis added) 42 U.S.C. § 602(a)(14).

the 75% federal funding provisions and the purpose language which originated with the 1956 amendments have been carried over essentially unchanged into the newly established Title XX of the Social Security Act. Section 2001 of the Act thus requires state services of the sort previously governed by Title IV-A to continued to be aimed at:

> "(1) Achieving or maintaining economic self support to prevent, reduce or eliminate dependency and
> "(2) Achieving or maintaining self-sufficiency including reduction or prevention of dependency."
> (codified at 42 U.S.C. §1397)

Clearly then it is only by a doctrine of administrative nullification of legislative prerogatives that the defendant-appellant Secretary of Agriculture can claim to invade the province of social services administered by the Secretary of Health, Education, and Welfare and mandated by the Congress over a term of twenty years.

III. Multiple Social Welfare Benefits the False Issue in the Case and the Meaning of Income.

Appellant Secretary of Agriculture in both the *Hein* and *Chek* cases has argued vehemently although without factual foundation that receipt of a transportation allowance in the case of appellee Karen Hein and a transportation, school books and school supplies allowance in the case of amicus Sandra Chek

> "effects an increase in the absolute amount of income the household has available for its usual expenses [and]
> "...frees a like amount of the household's income for other purposes." Brief for the Appellant Secretary of Agriculture in No. 75-1261, October Term, 1976, at 22 and 23.

There have been at least four analogous lawsuits[32] wherein two or more federal social welfare benefits were being received by a household and one of the federal agencies involved sought to treat those former benefits as income and thereby reduce the level of the latter benefits.[33]

In both the *Brown* and *Elam* cases, U.S. District Court Judge Young was confronted with the federal education program benefits — Work Study earnings in the *Brown* case and OASDI benefits in *Elam* — being treated as "income" for purposes of determining the level of entitlement under the AFDC program. Applicable to the plight of both

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32. *Brown v. Bates*, 363 F.Supp. 897 (N.D. Ohio 1973); *Elam v. Hanson*, 384 F.Supp. 549 (N.D. Ohio 1974); *Hamilton v. Butz*, 520 F.2d 709 (Ninth Cir. 1975); *Coleman v. Butz*, ___ F.Supp. ___ (W.D. Mich. 1976).

33. Appellant Secretary attempts to defend his regulations via a theory that the multiplicity of benefits to poor Americans under the panoply federal social welfare and education programs needed reform, specifically reform undertaken by his administrative fiat, making judgments as to their relative incentive effects, impact upon family stability, probability of administrative complexity and error, and programatic inequity. Brief for the Appellant in Dkt. No. 75-1261 at 20 and 21. The Solicitor makes a feeble parry:

> "Nothing in the Act requires the Secretary to ignore this fact." *Ibid.*

Amici's risposte is to acknowledge that certainly the Food Stamp Act does not prohibit the appellant Secretary from taking note of the facts as garnered in his *Report in Accordance with Senate Resolution*, 94th Cong. 1st Sess. (Committee Print. 1975) or in the twenty *Studies in Public Welfare* prepared in 1972 through 1974 for the use of the Subcommittee on Fiscal Policy of the Congressional Joint Economic Committee. The latter consider in great detail the policy significance of multiple benefits and make recommendations for legislative action. The fact that neither the 93rd nor the 94th Congress has addressed this problem area does not lead to the result of Congressional authority reverting to appellant Secretary out of a process akin to prescriptive easement (See Justice Black in *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 588-589 [1952]) or out of the need for action alone (See Justice Frankfurter's concurrence that executive authority is not constitutionally coextensive governmental power and that the need for action alone cannot authorize it, *Youngstown, Ibid* at 603-634).

appellee Hein and amicus Chek, Judge Young held in *Brown*:

> "The participant must maintain student status to be eligible for the program.... This Congressional mandate constrains the Court to view the funds [as being] for the particular purpose of obtaining an education." 363 F.Supp. at 901.

He concluded:

> "Congress, through the Work-Study Program, has attempted to provide a vehicle for the indigent to use to escape the poverty cycle. If the money earned by the participants in the Work-Study Program is applied against other assistance programs, that vehicle's utility is much weakened, and in many cases totally destroyed. The Court does not believe Congress chose by enactment of the Work-Study Program to draw the cycle of poverty tighter, but rather was attempting to break its bonds upon untrained poor. The Court will not allow the defendants to defeat this beneficient purpose by their own interpretation of the law, especially when that interpretation, however faithful it may be to the letter of the law, totally defeats the spirit of the law, and serves only a sterile administrative purpose."
>
> 363 F.Supp. at 902-903.

More recently in *Elam,* Judge Young was confronted with the interface of §§202(d), 401 and 402(a) of the Social Security Act of 1935 as amended.

> "One program, OASDI under §202(d)(1) seeks to aid a recipient in obtaining an education while the other program, AFDC, seeks to assist in the care of dependent children in their own houses or the home of a relative". 384 F.Supp. at 552 and 553.

Thus he held[34] that

> "The Court must attempt to enforce both applicable statutes in such a manner that the overriding purposes of the two statutes are achieved, even if the words used in the laws and regulations leave room for a contrary interpretation. See *Markham v. Cabell,* 326 U. S. 404, 66 S.Ct. 193, 90 L.Ed. 165 (1945). Many cases have pointed out that the Social Security Act is a remedial statute, to be broadly construed and liberally applied. *See e.g., Haberman v. Finch,* 418 F.2d 664, 667 (2d Cir. 1969); *Conklin v. Celebrezze,* 319 F.2d 569 (7th Cir. 1963).
>
> "...In this case, the Court does not believe that Congress could have intended by one project to aid OASDI recipients who desire education by providing benefits while they pursue a full-time course of study and then by another program to reduce the amount of benefits paid on behalf of dependent children of that OASDI recipient. It amounts to the federal government holding out a promise of aid for education with one hand and at the same time with the other hand having the state government, spurred by federal regulations, destroying that promise of aid. The Court finds that Congress has provided two assistance programs aimed at two distinct needs. Assistance for the one need, maintaining the family unit where one parent is unmarried, should not be reduced because a separate need of that parent for education is also present at the same time." 384 F.Supp. at 553.

Hamilton presented an interface between (1) the Secretary of Interior and an especially created series of regional

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34. On a parallel theory a three-judge Court in *Coleman, supra,* footnote 32, rejected a statutory and constitutional challenge to including survivors benefits received by children but restricted to their use and benefit in the income of the household of their mother and stepfather for food stamp purposes since purchasing food for the children was in their best interest.

corporations distributing settlement funds to Alaskan Natives in exchange for their land claims founded upon any aboriginal titles and (2) the defendant Secretary of Agriculture who sought to treat those settlement payments as both "income" and "resources" under the Food Stamp Act. The Ninth Circuit found against the defendant Secretary of Agriculture:

> "We have carefully considered the Secretary's view that Settlement Act payments are 'resources' as that term is defined in the food stamp regulations. But we cannot accept the Secretary's contention that his position is entitled to 'great weight' and that, consequently, his decision must be upheld unless it is manifestly unreasonable. Our obligation is to determine, by interpreting the relevant portions of the Settlement Act, whether Congress intended that settlement funds should be considered as 'resources'. Since the Secretary is not charged with the responsibility for implementing the Settlement Act, his views as to the Act's meaning are entitled to no more than ordinary deference. Courts accord 'great weight' only to the interpretations given a statute by the agency charged with the statute's administration. *Cf. United States v. Florida East Coast Railway Co., 410 U.S. 224, 236 n. 6, 93 S.Ct. 810, 35 L.Ed. 2d 223 (1973).*" 520 F.2d at 713-714 (footnotes deleted).

The impropriety of the Secretary of Agriculture's treatment of educational assistance entitlements for non-subsistence purposes is accentuated by §5(c) of the Food Stamp Act itself.[35] Section 5(c) demonstrates that Con-

35. "[E]ach State agency shall provide that a household shall not be eligible for assistance . . . if it includes an able-bodied adult person between the ages of eighteen and sixty-five (except mothers or . . . bona fide students in any accredited school or training program . . .) who . . . (a) fails to register for employment at a State or Federal employment office." [emphasis added.] 7 U.S.C. § 2014(c).

gress was mindful of the need for the Act to work in tandem with education and training programs and hence expressly excluded from that work registration requirement all "bona fide students in any accredited school or training program".

As was aptly held by the three judge court below:

> "The logical construction of this provision is that Congress intended to provide consideration for those who participated in education programs in an attempt to increase their earnings capacity. This goal cannot be properly furthered if allowances such as the one in question here are used to actually decrease the food purchasing power of participants." *Hein v. Burns,* 402 F.Supp. 398, 405 (S.D. Iowa 1975).

What this Court must inevitably reach in the course of this case is a construction of the term "income" as it is used by the Congress in the Food Stamp Act. Section 5(a) of that Act provides in pertinent part:

> "participation in the food stamp program shall be limited to those households whose income and resources are determined to be substantial limiting factors in permitting them to purchase a nutritionally adequate diet" 7 U.S.C. § 2014(a)

Just what income inclusions, exclusions, and deductions were intended by Congress to be considered as indispensable to securing access to adequate nutrition has never been elucidated until the present litigation and certainly the Department of Agriculture can hardly be said to have made any contribution to clarity or deserving of deference.[36]

From 1964 and until 1971, USDA was without any delegated rulemaking authority to implement this mandate, as

36. See discussion infra, section IV, p. 33 *et seq.*

such responsibility was vested with the states. Reports of tremendous variation in eligibility practices led the 91st Congress to direct the appellant Secretary to "establish uniform national standards of eligibility" reflecting the directive of §5(a).[37]

Regardless of the Solicitor's argument over the inclusion of non-food items within the "'income' figure which the Secretary used to evaluate need for food stamp assistance"[38], such testimony is neither in fact nor in law (pursuant to the canons of statutory construction) probative of what the Congress intended or what "income" means.

Amici by this brief of socioeconomic as well as legal analysis are urging this Court's examination of all social security and educational assistance legislation which provide vehicles for attaining self-sufficiency, as necessary for a full appreciation of the context of the Food Stamp Act. As Professor Sands urges:

> "this consideration must be more inclusive than the literal inquiry of in pari materia; it must probe basic policy and the pattern and development of the means and procedures used to activate that policy." C. D. Sands, 2A *Sutherland Statutory Construction* § 45.10 (4th ed. 1973) at 33.

The late Mr. Justice Harlan spoke in a similar vein as a prelude to this Court's 1971 overruling of its 1886 decision that maritime law does not provide a cause of action for wrongful death,[39] although the instant case presents no similar question of policy renunciation.

> "The legislature does not, of course, merely enact general policies. By the terms of a statute, it also indicates

37. P.L. 91-671, § 4, 84 Stat. 2048, 2049.

38. Brief for the Appellant, No. 75-1261, at 26 and 27.

39. *The Harrisburg*, 119 U.S. 199 (1886).

> its conception of the sphere within which the policy is to have effect. In many cases the scope of a statute may reflect nothing more than the dimensions of the particular problem that came to the attention of the legislature, inviting the conclusion that the legislative policy is equally applicable to other situations in which the mischief is identical. This conclusion is reinforced where there exists not one enactment but a course of legislation dealing with a series of situations and where the generality of the underlying principle is attested by the legislation of other jurisdictions." *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 392; 90 S.Ct. 1772, 1783, 26 L.Ed. 2d 339, (1971).

There is an unmistakable continuity of legislative purpose to the removal-of-dependency mandate of the Social Security Act, the financial aid provisions of the Higher Education Act, and the student work registration exemption of the Food Stamp Act.

The last was part of the same 1971 amendments to the Food Stamp Act that first gave appellant Secretary of Agriculture the authority and the responsibility to establish nationwide eligibility standards and to whatever extent there may be conflict between the specificity of §5(c) and the generality of § 5(a) the former should prevail.[40]

If there is one indispensable premise of human nutrition it is the immediacy of the impact of the deprivation of food. Once it has begun, hunger cannot long be denied. In light of this fact, if ever there was a social welfare program premised equally upon "current needs" and the "current and actual availability" of the means to meet those needs, surely it should be the food stamp program with its premise of alleviating hunger, undernutrition and malnutri-

40. C.D. Sands, *Sutherland Statutory Construction, supra*, § 46.05 at 57.

tion. Section 2 of the Food Stamp Act of 1964 as amended, 7 U.S.C. §2011.

This Court has previously reviewed the U. S. Department of Health, Education, and Welfare's (DHEW) construction of §402(a)(7) of the Social Security Act,[41] which has analogous phraseology and sustained DHEW's "current availability" regulation.[42]

First, in *Lewis v. Martin,* 397 U. S. 552, 90 S.Ct. 1282, 25 L.Ed. 2d 561 (1970) this Court invalidated California's "man assuming the role of spouse" (MARS) rule which presumed the availability of income from someone who was neither the actual nor adoptive father of children eligible for AFDC entitlements. Such a state agency rule was deemed void under the Supremacy Clause as inconsistent with the DHEW "current availability" regulation.

Then by *per curium* opinion in *Englemen v. Amos,* 404 U. S. 23, 92 S.Ct. 181, 30 L.Ed.2d 143 (1971) this Court

41. Title IV-A provides in pertinent part that state agencies administering AFDC plans

> "shall, in determining the need [of an eligible child], take into consideration any other income and resources [of the child] . . . . as well as any expenses reasonably attributable to the earnings of any such income."
> 42 USC § 602(a) (7).

42. The "current" or "actual" availability concept is traceable at least back to the Social Security Board proceedings of 1940. See "Determination of Need (Revised in Accordance with Minutes of Board Meeting of August 9, 1940), "Memorandum from Geoffrey May, Acting Director, Bureau of Public Assistance to Oscar M. Powell, Executive Director, dated August 28, 1940", *Board Minutes,* August 30, 1940, Board Document No. 3950-f (Typewritten), p. 1.

It was later embodied as DHEW Handbook of Public Assistance Administration (HPAA) Part IV, § 3131.7 and most recently as 45 CFR § 233.20(a)(3)(ii)

> "(ii) . . . in establishing financial eligibility and the amount of the assistance payment . . . (c) only such net income as is actually available for current use on a regular basis will be considered, and only currently available resources will be considered . . . ."

affirmed the invalidation of a New Jersey regulation which treated as income for AFDC purposes a stepfather's earnings even though they were not "actually available" for current use by the dependent children.[43]

A number of lower courts have ruled similarly[44] and most recently Judge Parker in *Gutierrez v. Butz,* 415 F.Supp. 827 (D.D.C. 1976) held that in the case of migrant workers, who are without funds when they arrive in an area but anticipate earning income in the future,

> "Although there are no cases interpreting the meaning of 'income' under the Food Stamp Act,
> ". . . . income which is not immediately available should not be imputed to applicants for Food Stamps."
> 415 F.Supp. at 831.

The Solicitor has focused his reading of the statute upon "what" is "income". His analysis fails to be persuasive because of: (1) what Amici have characterized as the continuity of legislative purposes between the removal-of-dependency mandate of the Social Security Act, the student work registration exemption of the Food Stamp Act, and the federal Higher Education Act student assistance directives; (2) the exceeding of his policy-making prerogatives under the Food Stamp Act by the appellant Secretary of Agriculture[45]; and (3) the major oversight of construction

43. See *Shea v. Vialpando,* 416 U.S. 251, 261, 94, S.C. 1746, 1752 and 1753, 40 L.Ed.2d 120, 129 and 130 (1974).

44. E.g., *Green v. Barnes,* 485 F.2d 242 (10th Cir. 1973); *NWRO v. Weinberger,* 377 F.Supp. 861 (D.D.C. 1974); *Barrons v. Bellaire,* 496 F.2d 1187 (5th Cir. 1974); *Kaisa v. Chang,* 396 F.Supp. 375 (D. Hawaii 1975); See also the cases collected in *NWRO v. Mathews,* 533 F.2d 637, 647 (D.C. Cir. 1976).

45. As is evidenced by the discussion of the *Youngstown* case in footnote 33 *supra,* the *Hamilton* decision, and the *Trump v. Butz* decision (D.D.C. No. 76-0933, June 18, 1976, see Brief for the Appellant at 5, footnote 3), all stand for the proposition that there are distinct outside limits to Congress' vesture of rulemaking authority in appellant Secretary under the Food Stamp Act of 1964, as amended.

represented by not addressing the "when" of something being "income".

Eligibility determinations and the level of services to be provided under Title XX of the Social Security Act are made by the state agencies pursuant to the state plan required under §2004 of the Act. The construction urged by Amici is that such awards cannot be considered as "income" for food stamp purposes "when" those sums are not actually and currently available to meet subsistence needs. That is an impossibility as §2002(a)(8) provides in pertinent part:

> "No payment may be made under this section with respect to any expenditure if payment is made with respect to that expenditure under Section 402 or 422 [42 U.S.C. §§ 602 and 622] of this Act." 42 U.S.C. § 1397a (a)(8).

As has been demonstrated *supra* at pp. 13-19, both appellee Hein and amicus Chek met only non-subsistence needs via their educational assistance benefits.[46] As presently established by the appellant Secretary of Agriculture, the food stamp program is one of individualized eligibility determinations. In that context the only relief sought by both plaintiff-appellee Hein and amicus Chek is a disregard of removal-of-dependency benefits which are not actually available for current use for subsistence purposes.[47]

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46. In fact, to do otherwise in the case of amicus Chek would risk perjury as she executed an affidavit pursuant to 20 U.S.C. § 1088g. See footnote 28, supra.

47. This is precisely what the three-judge court below has ordered:

> "[I]t will be ordered that defendants . . . . should be permanently enjoined from including in monthly net income of any person receiving same, any amount received by such person as reimbursement for necessary commuting expenses, pursuant to an Individual Education and Training Plan, unless such amount is deducted from such person's monthly net income in determining such person's adjusted net income." *Hein v. Burns*, 402 F.Supp. 398, 408.

IV. Appellant Secretary of Agriculture's Rulemaking Herein Is in Derogation of the Administrative Procedure Act.

Professor Kenneth C. Davis, among other commentators, has long lauded the notice and comment procedures of 5 U.S.C. §553 as "one of the greatest inventions of modern government."[48] That section provides for publication in the Federal Register of a general notice of the rulemaking and an opportunity to the interested public to submit written data, views or arguments "with or without opportunity for oral presentation" before the agency, as a prelude to promulgation of the final regulations accompanied by a basis and purpose statement.

These requirements are directed toward the assembling of a

> "focused record for agency decisionmaking which, like a trial court record, could become the record for [judicial] review without further action."[49]

As recently articulated in a number of D.C. Circuit Court of Appeals cases, these statutory requirements include at a minimum, publication of the policy objectives of the agency which underlie a specific proposed rule, along with the empirical findings which lead to the particular formula-

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48. K. C. Davis, *Administrative Law of the Seventies*, § 6.01 at 168 (Bancroft-Whitney, 1976); see Wm. F. Pederson, Jr., "Formal Rules and Informal Rulemaking", 85 Yale L.J. 38, 74-75 (1975)

> "[The newly recognized procedural requirements being read into § 553], together with substantive judicial review, are becoming the most effective and reliable safeguards against arbitary regulation in the whole rulemaking process."

See also S. Wright, "The Courts and the Rulemaking Process: The Limits of Judicial Review", 59 *Cornell L. Rev.* 375 (1974).

49. Pederson, *supra*, footnote 48, at 78.

tion, and a justification of the final rule based upon the comments of interested parties.[50]

The primacy of the requirement of adequate notice in the first instance has been ably assayed in *Wagner Electric Corp. v. Volpe*[51] in the Third Circuit and *NWRO v. Mathews* in the D.C. Circuit.[52] In the former, several complex notices were given and Secretary Volpe contended that they were sufficient to afford the public the opportunity to submit comment upon "the entire subject matter" and that in fact some parties did discuss the issue in question. In the view of the Third Circuit Court of Appeals the fact that some did succeed in reading between the lines was not enough — "others possibly not so knowledgeable also were interested persons" 466 F.2d at 1019. In sum the Administrative Procedure Act requires notice before rulemaking, not after.

In the latter, a U. S. Department of Health, Education, and Welfare rulemaking was invalidated for the want of an adequate administrative record pursuant to 5 U.S.C. § 553.

> "For a regulation of this type to withstand judicial scrutiny, HEW must provide a more precise articulation of findings and relevant factors. Although some commentators have suggested that agency reconsideration in order to provide a satisfactory record may be of little benefit to a challenging party. See Williams,

50. *NWRO v. Mathews*, 533 F.2d 637 (D.C. Cir. 1976); *Rodway v. USDA*, 514 F.2d 809 (D.C. Cir. 1975); *Portland Cement Association v. Ruckelshaus*, 486 F.2d 375 (D.C. Cir. 1973), *cert. denied*, 417 U.S. 921 (1974); *Kennecott Copper Corp. v. EPA*, 462 F.2d 846 (D.C. Cir. 1972).

51. 466 F.2d 1013 (3rd Cir. 1972), accord *City of New York v. Diamond*, 379 Fed. Supp. 503 (S.D.N.Y. 1974).

52. 533 F.2d 637 supra footnote 50.

> "Hybrid Rulemaking" Under the Administrative Procedure Act: A Legal and Empirical Analysis, 42 *U.Chi. L. Rev.* 401, 424-25 (1975), we are convinced that the three-step procedure of section 553, when properly applied, can provide an adequate basis for the substantive review mandated by the arbitrary and capricious standard.
>
> 'Step one of section 553 will yield the agency's initial proposal, its tentative empirical findings, important advice received from experts, and a description of the critical experimental and methodological techniques on which the agency intends to rely. Step two will produce the written or oral replies of interested parties to the agency's proposals and to all the other "step one" materials. And step three will furnish the final rule, accompanied by a statement both justifying the rule and explaining its normative and empirical predicates through reference to those parts of the record developed in steps one and two.' Wright, ["The Courts and the Rulemaking Process: The Limits of Judicial Review"] 59 *Cornell L. Rev.* at 395."

The type of regulation under scrutiny there bore on eligibility for AFDC based upon resource limitations. The case at bar deals with a similar type of regulation bearing on food stamp eligibility. In *NWRO v. Mathews, supra,* the D.C. Court of Appeals held:

> "review of the regulation . . . impossible because the promulgation consistently failed to articulate factual determinations underlying the decisions of the Secretary. For these reasons, we remand the case to the district court for the entry of a judgment declaring the regulation invalid." 533 F.2d at 649.

The same procedural failing pervades the regulation here under substantive review and that defect should take precedence in this Court's deliberations.[53]

The known aspects of the regulatory genesis of the USDA policy here under challenge are as follows:

On January 28, 1974, USDA proposed a major package of regulatory reforms to the food stamp program. 39 Fed. Reg. 3641-48. The preamble to the notice stated *in toto*:

> "Pursuant to the authority contained in the Food Stamp Act of 1964 as amended (78 Stat. 703, as amended; 7 U.S.C. 2011-2025), notice is hereby given that the Food and Nutrition Service, Department of Agriculture intends to revise its regulations governing the operation of the Food Stamp Program for the purpose of incorporating amendments to the Food Stamp Act in Public Law 93-86, approved August 10, 1973; including revisions required by the Supreme Court decision holding that the "tax dependency" and "relatedness" provisions of the Food Stamp Act are unconstitutional; and making other necessary technical changes." 39 Fed. Reg. at 3642.

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53. This procedural defect was explicitly raised by amicus Chek as her third claim for relief in the April 16, 1975 First Amended Complaint (Clerk's Record in *Chek v. Butz*, Ninth Cir. No. 75-2843, vol. 1. pp. 76-96 at 87), amicus Chek asserted a claim under 5 U.S.C. § 706(2). Simultaneously, interrogatories were filed to probe the underpinnings of USDA's policy as it evolved pursuant to the dictates of 5 U.S.C. § 553. See Clerk's Record, vol. I, pp. 69-74. At the district court hearing on April 24, 1975, counsel for California and USDA resisted filing a response to plaintiff Chek's interrogatories and volunteered to let the validity of the Secretary's policy of refusing to recognize income deductions for transportation, school books, and school supplies stand on an administrative record devoid of any policy or empirical basis except those proferred by defendant Secretary of Agriculture's counsel in the midst of active litigation. Cf. *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 420 (1971); *NWRO v. Mathews*, 533 F.2d at 649.

The amendment to 7 C.F.R. § 271.3(c)(1)(iii)(*e*) was to all outward appearances a purely "technical change", and only "necessary" because of renumbering. One sentence —

> "(iii) Deductions for the following household expenses shall be made:
>
> ". . . (*f*) Educational expenses which are for tuition and mandatory school fees, including such expenses which are covered by scholarships, educational grants, loans, fellowships, and veterans' educational benefits." 36 Fed. Reg. at 14107, July 29, 1971 —

grammatically became two sentences —

> "(iii) Deductions for the following household expenses shall be made:
>
> ". . . (*e*) Educational expenses which are for the tuition and mandatory school fees. This includes those tuition and mandatory school fees which are covered by scholarships, educational grants, loans, fellowships, and veterans' educational benefits." 39 Fed. Reg. 3644, January 28, 1974.

On March 4, 1974, the *Hein* three-judge court for the first time considered and invalidated appellant Iowa's policy of denying an income deduction to students with transportation allowances for school-related commuting costs. *Hein v. Burns*, 371 F.Supp., 1091 (S.D. Iowa, 1974). Intervening as that decision did in the rulemaking process, elicited a *sub rosa* policy decision by the U. S. Department of Agriculture regarding allowable income deductions for costs related to education. Counsel for amici in the course of *Rios v. Butz*, N.D. Calif. No. 74-1372-ACW have discovered and put into evidence an internal memorandum, dated April 3, 1974, from the then Director of the Food Stamp Division of the Food and Nutrition Service (FNS) of USDA, James H.

Kocher to Edward J. Hekman, Administrator of FNS-USDA.[54]

In recommending option number 1 (a recommendation which Heckman approved with his initials), Director Kocher wrote:

> "We have received a number of requests to permit more deductions for costs related to education. Although the recommended approaches vary, the requests are based on a common argument that our treatment of student expenses is inconsistent and inequitable when compared to other household, especially those with trainees or workers. There are currently two court suits challenging our restrictions on educational deductions, and although there is an appeal pending the initial ruling of the court in the Hein-vs-Iowa case was contrary to our policy. We are, nonetheless, still faced with the problem of preventing program abuse by the affluent college student. As we are now in the process of amending the Regulations, and have received a number of comments from State agencies and others urging broader educational deductions, *we felt it appropriate to review our policy and alternatives at this time.*
>
> "... *ALTERNATIVES*
>
> "Breifly [sic], the issues raised in the requests and court challenges include the application of the 10 percent income exclusion to educational grants, permitting child care deductions for students as well as trainees and workers, disregarding vendor payments by welfare agencies for transportation related to education or providing a deduction for such expenses, and including books, supplies, and other costs as allowable educational deductions.

54. This USDA memorandum has been filed with an authenticating affidavit in the Ninth Circuit as part of the record in *Chek v. Butz*, No. 75-2843 and a copy is attached herewith as Appendix A.

> "Our options in handling student expenses are:
>
> "1. Maintain the current policy of restricting educational deductions to tuition and mandatory fees. Congress has shown a continuing interest in the problems created by the 'nonneedy' student and the necessity for control in this area. However, the distinction between education and training is not an easy one to maintain in many instances and will continue to generate problems. In addition, both court suits contend that transportation costs and other expenses can be deducted under the wording of the present Regulations. *In January, we published* for public comment *amendatory language* to clarify that deductions will be allowed only for tuition and mandatory fees, and *this can be even further strengthened in the final Regulations.* However, depending on the final outcome of these suits, we may be forced to abandon our current position." (Emphasis added.)[55]

As a result of this policy review, on July 15, 1974, without prior proposal or notice, the Secretary of Agriculture published a purported final version of § 271.3(c)(1)(iii)(*f*)

> "(iii) Deductions for the following household expenses shall be made (this list is inclusive and no other shall be allowed):
>
> ". . . (*f*) Tuition and mandatory fees assessed by educational institutions (no deductions shall be made for any other educational expenses such as, but not limited to, the expense of books, school supplies, meals at school, and transportation)." 39 Fed. Reg. 25995-26008, at 26003.

USDA sought to rationalize this significant alteration of eligibility policy with the terse comment

> "the educational expenses which may have been deducted have not been changed but have been revised for purposes of clarity". 39 Fed. Reg. at 25997.

55. See appendix A at A1 and A2.

In fact, however, appellant Secretary in removing this so-called ambiguity also voided the pre-existing option of the states to provide broader educational deductions than just tuition and mandatory fees.

The final exclusive income educational deduction catalog of July 15th neither in law nor seemingly in fact a product of the January 28th proposed regulation.[56] Neither in the preamble nor in the body of the January 28th proposed § 271.3(c)(1)(iii)(*e*) is it communicated to "interested persons" that anything other than a renumbering and run-on sentence are being addressed.

As is elaborated upon by the D.C. Court of Appeals in *Rodway, supra,* 514 F.2d at 814, USDA voluntarily by notice waived the potential exemption of 5 U.S.C. § 553(a)(2) in response to Recommendation 16 of Administrative Conference of the United States.[57] The Conference found that—

> "These types of rules may nevertheless bear heavily upon nongovernmental interests. Exempting them from generally applicable procedural requirements is unwise.
>
> "... Removing these statutory exemptions would not diminish the power of the agencies to omit the prescribed rulemaking procedures whenever their observances were found to be impracticable, unnecessary or contrary to the public interest. A finding to that effect can be made, and published in the Federal Register, as to an entire subject matter concerning which rules may

56. Amici qualify only the factual chain of causation as there is plainly a scant administrative record before the Court. There can be no doubt however that the record which does exist—the Kocher-Hekman memorandum—was evoked by the March 4, 1974 decision of the *Hein* three-judge court.

57. 1 *Recommendations and Reports of the Administrative Conference of the United States* 29 and 30, 205-377 (GPO, 1970).

> be promulgated. Each finding of this type should be no broader than essential and should include a statement of underlying reasons rather than a merely conclusory recital."[58]

Assuming arguendo that there was "good cause" within the meaning of 5 U.S.C. § 553(b)(3)(B) neither a "finding" nor "brief statement of reasons" is set forth in the July 15, 1974 basis and purpose statement.

Just as the opportunity for public comment was undermined by USDA's failure to give adequate notice of the final version of 7 C.F.R. § 271.3(c)(1)(iii)(*f*), this Court's scrutiny of the Solicitor's *post hoc* rationalizations in the Brief for the Appellant, is at best awkward means for judicial review of administrative (as opposed to appellate-counsel rationalized) rulemaking.[59]

Professor Davis has also recently argued in favor of Recommendation 74-4 of the Administrative Conference[60] which provides in pertinent part:

> "1. In the absence of a specific statutory requirement to the contrary, the following are the administrative materials that should be before a court for its use in evaluating, or preenforcement judicial review, the factual basis for rules adopted pursuant to informal procedures prescribed in 5 U.S.C. § 553: (1) the notice of proposed rulemaking and any documents referred to therein; (2) comments and other documents submitted by interested persons; (3) any transcripts of oral presentations made in the course of the rulemaking; (4)

58. *Ibid.* at 29 and 30.

59. Unlike the situation presented to this Court in *Citizens to Preserve Overton Park v. Volpe,* 401 U.S. 402, 419 (1970), there are not even "litigation affidavits" in the appellate record which might be considered to constitute the "administrative record".

60. Davis, *Administrative Law of the Seventies, supra,* footnote 48, § 29.01-6, at 669 and 670.

factual information not included in the foregoing that was considered by the authority responsible for promulgation of the rule or that is proffered by the agency as pertinent to the rule; (5) reports of any advisory committees; and (6) the agency's concise general statement or final order and any documents referred to therein. References to the "record" or "whole record" in statutes pertaining to judicial review of rules adopted under Section 553 should be construed as references to the foregoing in the absence of a legislative intent to the contrary. The Conference does not assume that the reviewing court should invariably be confined to the foregoing materials in evaluating the factual basis for the rule." footnote deleted) 3 *Recommendations and Reports of the Administrative Conference of the United States,* 48-51 and 558-565 (GPO, 1974).

Sadly with the exception of item (1), in part (4)[61], and (6), the record for judicial review is wanting.

Although this has been a widely litigated issue[62], Amici are of the view of that *Overton Park* statement of this court that "inquiry into facts is to be searching and careful" (401 U.S. at 416) necessitates a categorical voiding of the regulation in issue. A remand would seem a futile act as no pertinent comments were ever able to be submitted.

In analogous circumstances it has been held —

"Voiding the present regulations on what at first blush appears to be a technicality is not as pointless as it may seem. We believe that the 30-day notice rule

61. That is the Kocher-Hekman memorandum attached hereto as Appendix A.

62. *Turchin v. Butz,* 405 F.Supp. 1263 (D. Minn. 1976); *Rivera v. Santiago,* ..... F.Supp. ..... (D.P.R. Civil No. 76-171, September 15, 1976); *Lakeside v. Oregon Public Welfare Division, CCH Poverty Law Reporter* ¶21,718 (Oregon Court of Appeals, No. 2-25-OZA 897-6, September 10, 1975).

serves an important interest, the right of the people to present their views to the government agencies which increasingly permeate their lives. The interchange of ideas between the government and its citizenry provides a broader base for intelligent decision-making and promotes greater responsiveness to the needs of the people, especially in cases such as this where Congress has only roughed in its program. Indeed, a meaningful pre-publication dialogue between plaintiffs and the Secretary may have even avoided this lawsuit." *Kelly v. U.S. Department of Interior,* 339 F. Supp. 1095, 1102 (E.D. Calif. 1972)[63]

The right of adequate notice is even more institutionally key. Since the defendant-appellant Secretary has failed to publish notice of the regulation challenged herein, it of course follows that the regulation is additionally infirm inasmuch as the second and third requirements of § 553 are also unmet. If prior notice was not published, then no comments were, or could have been solicited. And with no comments nor any statement of "basis and purpose" based on an analysis of such comments, the entirety of § 553 has been abrogated.

V. Conclusion.

In sum, the food stamp regulation herein fails utterly to meet the most elementary demands of the Administrative Procedure Act and must therefore, be held null and void.

63. Accord *Anderson v. Butz,* ..... F.Supp. ..... (E.D. Calif. No. S-75-401, 1975), 37 Ad.L.2d 852; *Lewis v. Weinberger,* 415 F.Supp. 652, 659 (D. N.M. 1976).

Alternatively, the judgment of the district court should be affirmed on statutory grounds.[64]

October 22, 1976
San Francisco, California

Respectfully submitted,

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RALPH SANTIAGO ABASCAL
LORELEI JOY BORLAND
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64. Counsel for amici wish to acknowledge the invaluable assistance of Professor Barbara R. Bergmann, Sandra Fulmer, Michael Gill, Barbara Mack Heller, F. Allen Pang, and Valerie Stewart.

Appendix

United States Department of Agriculture
Food and Nutrition Service

Washington, D.C. 20250
Date: Apr 3 1974

FSP — Education Deductions
Edward J. Hekman
Administrator

PROBLEM

We have received a number of requests to permit more deductions for costs related to education. Although the recommended approaches vary, the requests are based on a common argument that our treatment of student expenses is inconsistent and inequitable when compared to other households, especially those with trainees or workers. There are currently two court suits challenging our restrictions on educational deductions, and, although there is an appeal pending the initial ruling of the court in the Hein-vs-Iowa case was contrary to our policy. We are, nonetheless, still faced with the problem of preventing program abuse by the affluent college student. As we are now in the process of amending the Regulations, and have received a number of comments from State agencies and others urging broader educational deductions, we felt it appropriate to review our policy and alternatives at this time.

BACKGROUND

In 1971 when we established the first national eligibility criteria, a conscious decision was made to restrict educa-

tional deductions to tuition and mandatory fees in an effort to control student participation. The Food Stamp Program was not to be used as an aid to education. This policy was in line with Congressional attitudes as evidenced by the tax dependency and similar provisions.

At the same time, however, work incentives were provided to wage earners in the form of income exclusions (10 percent of earned income up to $30 per household), child care deductions, and resources exemptions. Trainees received the same work incentives because certain training allowances especially under the WIN and Manpower Training Programs may approximate wages in on-the-job training situations. Unfortunately, these same programs also provide training allowances to participants attending high school, vocational school and even college. These trainees receive both the deductions allowed for education and the income disregards and deductions granted wage earners, thereby creating inequities when comparing their situation to that of their fellow students.

ALTERNATIVES

Briefly, the issues raised in the requests and court challenges include the application of the 10 percent income exclusion to educational grants, permitting child care deductions for students as well as trainees and workers, disregarding vendor payments by welfare agencies for transportation related to education or providing a deduction for such expenses, and including books, supplies, and other costs as allowable educational deductions.

Our options in handling student expenses are:

1. Maintain the current policy of restricting educational deductions to tuition and mandatory fees. Congress has

shown continuing interest in the problems created by the "nonneedy" student and the necessity for control in this area. However, the distinction between education and training is not an easy one to maintain in many instances and will continue to generate problems. In addition, both court suits contend that transportation costs and other expenses can be deducted under the wording of the present Regulations. In January, we published for public comment amendatory language to clarify that deductions will be allowed only for tuition and mandatory fees, and this can be even further strengthened in the final Regulations. However, depending on the final outcome of these suits, we may be forced to abandon our current position.

2. Permit additional deductions for education related costs. Such additional costs could be allowed only for specified items or by broadening the educational deduction across the board. The following summarizes the various income factors which could be affected by a change in educational deductions:

a. The 10 percent income exclusion could be extended to include educational grants as well as wages and training allowances. This would provide the household with an allowance for related costs such as transportation without involving a specific deduction for such costs. In addition, there would still be the $30 limit per household per month regardless of the mix of workers, students, and trainees. However, the 10 percent would only apply to specific income for education such as grants, scholarships, fellowships, loans, etc. Students without such income would not get a deduction even though they incur the same expenses. Thus, under this alternative, inequities could be broadened rather than eliminated.

b. Education expenses could be broadened to include other related costs in addition to tuition and mandatory fees. Specific items could be added such as books and transportation costs; however, we would have to justify why only the specified costs are deductible and not others. Moreover, if a deduction is allowed for the actual costs of these related expenses, the student would have an advantage over workers and trainees whose deduction for similar expenses is limited to 10 percent of associated income to a maximum of $30.

c. The deduction for child care expenses can be broadened to include education as well as work or training purposes. Child care is recognized as an extraordinary work related expense and is therefore allowed as a separate deduction from other work related costs. It can likewise be a separate cost of education and deductible on its own merits regardless of what other expenses are or are not allowed. This deduction would only benefit the adult student with a family. It is particularly difficult to maintain a distinction between students and trainees for child care purposes in view of their similar and often identical circumstances.

RECOMMENDATION

We recommend maintaining our current policy (Alternative 1) as we are opposed to a general broadening of educational deductions. The administrative difficulties and inequities of broadening educational deductions are such that we would prefer not to initiate change in this area unless required to by a court decision. We realize the ambivalent position of trainees will continue to create

inequities and make many decisions in this area appear arbitrary. We would prefer to eliminate the special treatment of trainees rather than extend such treatment even further by including all students. However, having lost this battle once already to WIN advocates, we do not feel this alternative is feasible at the present time.

We would however recommend one exception to this approach. We recommend that child care deductions be allowed for the adult students with fam"'es (Alternative 2 c).

If you concur in the above recommendations, we will proceed with the appropriate language for incorporation into the final Regulations.

James H. Kocher
Director
Food Stamp Division

see

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976

Nos. 75-1261
75-1355

SECRETARY OF AGRICULTURE,

Appellant,

vs.

KAREN HEIN, et al.,

Appellees.

KEVIN J. BURNS, etc., et al.,

Appellants,

vs.

KAREN HEIN, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF IOWA

MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM, after argument

Appellees hereby move this Court for permission to file the attached Supplemental Memorandum in the above-captioned action, pursuant to Rule 41(5) of the Rules of this Court. In support of this motion, the appellees state as follows:

1. During oral argument of this case, certain points were raised that had not previously been raised or addressed by the parties, and counsel for the appellees was not able to address them fully or provide citations to authority during argument.

2. On November 26, 1976, three days prior to the oral argument of this case, the appellants in No. 75-1355 filed a reply brief. Because

counsel for the appellees did not receive a copy of this brief on November 26th, he was not able to review it carefully prior to oral argument or to respond to it during oral argument.

3. The purposes of the attached memorandum are (a) to provide specific citations to authority with regard to one point raised in oral argument, and (b) to address very briefly one assertion made in the reply brief in No. 75-1355.

WHEREFORE, the appellees request that they be permitted to file the attached Supplemental Memorandum.

Respectfully submitted,

Robert Bartels

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IN THE
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OCTOBER TERM, 1976

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ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF IOWA

SUPPLEMENTAL MEMORANDUM

This memorandum is submitted to address briefly two points raised in oral argument and in the reply brief of the appellants in No. 75-1355.

1. During oral argument, there was discussion of the administrative costs that would be involved in determining what portion of the "training related expense allowance" of a participant in a "full-time" Individual Education and Training Plan was necessary to travel in connection with the Plan. Counsel for the appellees indicated that the costs would be minimal for several reasons, including, inter alia, the fact that the state appellants (who actually administer the Food Stamp program in Iowa) must in any event make the same determination in connection with their administration of the AFDC program. This argument involved two propositions,

both of which are true but neither of which was supported by specific citation to authority during argument. The first proposition was that all participants in Individual Education and Training Plans in Iowa must be AFDC recipients; this proposition is supported by Pages XIII-8-1 and XIII-8-2 of the Iowa Department of Social Services Employees' Manual (see Appendix A to this Memorandum).[1/] The second proposition was that in computing income for purposes of deciding eligibility and benefit levels for AFDC benefits, the state appellants must determine and exclude that portion of a "training related expense allowance" that is necessary for travel in connection with an Individual Education and Training Plan; this proposition is supported by 45 C.F.R. 233.20(a)(3)(iv)(b), which states in pertinent part that "loans and grants . . . obtained and used under conditions that preclude their use for current living costs" may not be included in "income" for AFDC purposes.

2. In their reply brief, the state appellants "estimate" that it would take approximately 27,256 man hours to comply with the second part of the District Court's Order, which concerns the adjustment of future food stamp purchase prices for food stamp recipients whose benefits have been reduced improperly in the past under the appellants' "income" policies. (State Appellants' Reply to Appellees' Brief, p.7, fn.6). This "estimate" is unsupported by anything more than a guess by a "state official." Moreover, it is apparently based on an extraordinarily overblown procedure for complying with the District Court's Order. In order to comply with the second part of that Order, the state appellants could simply post a notice in all Department of Social Services offices notifying current food stamp recipients of the Court's Order and telling recipients that might be covered by the Order to so inform their caseworkers. Caseworkers

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[1] A woman who is ineligible for AFDC because she is living with her parents but whose child is receiving AFDC is eligible for child care assistance under limited circumstances, Employees' Manual XIII-8-2; however, this does not affect the appellees' argument.

could then determine from past records for those recipients who identified themselves the amount by their food stamp purchase prices had been improperly increased. [If the state appellants wished to verify travel expenses on an individual basis, they could require recipients seeking an adjustment to fill out an affidavit stating how much of their training related expense allowances had been used for educational travel expenses; such an affidavit is all that is required under federal food stamp regulations for AFDC recipients, 7 C.F.R. 271.4(a)(1).] Even if every one of the 3,407 trainees that have participated in Individual Education and Training Plans since 1973 were still on food stamps, the above-described procedure would not involve any extraordinary administrative effort by the state appellants.

Respectfully submitted,

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Attorney for Appellees

APPENDIX A: SUPPORTIVE MATERIAL

1. Iowa Department of Social Services Employees' Manual, p. XIII-8-1:

"INDIVIDUAL EDUCATION AND TRAINING PLAN

ORGANIZATION AND ADMINISTRATION

Program objectives

. . . The IETP offers vocational training and job placement opportunities to qualified AFDC recipients."

2. Iowa Department of Social Services Employees' Manual, p. XIII-8-2:

"INDIVIDUAL EDUCATION AND TRAINING PLAN

PROCESS (cont'd)

* * *

Client Eligibility for IETP Services

All AFDC recipients may be considered for IETP services. In addition, the Individual Education and Training Plan may pay child care assistance for an unmarried mother who wants to return to high school, who lives in her parents' home and is ineligible for ADC but has a child receiving ADC. This allowance can be made only when there is no one in the home to provide care."